

GAHC010025602024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/811/2024

MUNU BEGUM @ MUSSTT MUNU BEGUM AND ANR
D/O- LATE RIYAZ ALI, R/O- HOUSE NO.15, MILAN PATH, DWARANDHA, P.O.
KHANAPARA, P.S. DISPUR, DIST. KAMRUP (M), ASSAM, PIN- 781022

2: HANUFA BEGUM
D/O- LATE RIYAZ ALI
R/O- HOUSE NO.15
MILAN PATH
DWARANDHA
P.O. KHANAPARA
P.S. DISPUR
DIST. KAMRUP (M)
ASSAM
PIN- 78102

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HOME HOME AFFAIRS,
DISPUR, GUWAHATI-6

2:THE SUPERINTENDENT OF POLICE
KAMRUP METRO
ASSAM
PIN- 781001

3:THE OFFICER-IN-CHARGE
DISPUR POLICE STATION
DIST.- KAMRUP METRO
ASSAM
PIN- 78100

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 19-02-2024

Heard Mr. S.B. Laskar, learned counsel for the petitioners and Mr. S. Baruah, learned Junior Government Advocate, Assam for all the respondents.

2. By institution the instant writ petition, the petitioners have sought to invoke the extra-ordinary jurisdiction of this Court under Section 226 of the Constitution of India in order to seek a direction in the nature of Mandamus to the Officer In-Charge, Dispur Police Station to register a case on the basis of a complaint filed by the petitioner no. 2 in terms of an Order dated 27.10.2023 passed in C.R. Case no. 588^C/2023 passed by the learned Special Judicial Magistrate, 1st Class, Kamrup [M], Guwahati.

3. It is stated that the two petitioners are sisters in relation and according to them, the petitioner no. 1 is in occupation of a Government Eksania land, possession of which was handed over to her by her deceased brother, Late Ahidur Rahman, who died on 03.10.2020. It is the allegation of the petitioners that the petitioner no. 2 filed a First Information Report [FIR] before the Officer In-Charge, Dispur Police Station on 18.08.2023 alleging commission of cognizable offences. When the Officer In-Charge, Dispur Police Station did not register any case on the basis of the said FIR, the petitioners had approached the Commissioner of Police, Guwahati by way of a representation. When the

representation stated to have been submitted before the Commissioner of Police, Guwahati did not evoke any response, the petitioners approached the Court of the learned Chief Judicial Magistrate, Kamrup [M], Guwahati by way of a complaint. On receipt of the complaint, the same was registered as C.R. Case no. 588^C/2023.

4. The said complaint case, C.R. Case no. 588^C/2023 stood transferred to the Court of learned Special Judicial Magistrate, 1st Class, Kamrup [M], Guwahati. After going through the affidavit submitted by the complainant, that is, the petitioner no. 2 and upon hearing the learned counsel for the complainant, the learned Special Judicial Magistrate, 1st Class, Kamrup [M], Guwahati found that there was need for police investigation in respect of the allegations made in the complaint. Accordingly, the learned Special Judicial Magistrate, 1st Class, Kamrup [M], Guwahati by an Order dated 27.10.2023, directed the Officer In-Charge, Dispur Police Station to register a First Information Report [FIR] and thereafter, to investigate into the same either by himself or through a subordinate officer and to submit a report in final form.

5. The petitioners have approached this Court by the instant writ petition with a grievance that despite the Order dated 27.10.2023, the Officer In-Charge, Dispur Police Station has not registered the FIR till date. The said Order dated 27.10.2023 is evidently an Order passed in exercise of the powers conferred under Section 156[3] of the Code of Criminal Procedure, 1973 [‘the Code’ or ‘CrPC’, for short].

6. A Judicial Magistrate, before taking cognizance of the offence, mentioned in a complaint, can order investigation under Section 156[3], CrPC. It has been

observed by the Hon'ble Supreme Court of India in *Sakiri Vasu vs. State of Uttar Pradesh and others*, reported in [2008] 2 SCC 409, that Section 156[3], CrPC that there is an implied power in the Magistrate under Section 156[3], CrPC to order investigation of a criminal offence or to direct the Officer In-Charge of the police station concerned to hold a proper investigation and take all necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same. It is settled that even if a Magistrate does not say in so many words while directing investigating under Section 156[3], CrPC that an FIR should be registered, it is the duty of the Officer In-Charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. In this connection, it is also apt to refer to the following observations made by the Hon'ble Supreme Court of India in *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage*, reported in [2016] 6 SCC 277, :-

- "2. This Court has held in *Sakiri Vasu Vs. State of U.P.*, that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156[3] CrPC. If such an application under Section 156[3] CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu* case because

what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156[3] CrPC and if he does so, the Magistrate will ensure, if *prima facie* he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.
4. In view of the settled position in *Sakiri Vasu* case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156[3] CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate [as investigation is the job of the police]. Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”
7. In view of such settled position of law, this Court while not entertaining the present writ petition, observes that the petitioner shall avail the remedy by approaching the jurisdictional Magistrate under Section 156[3], CrPC if despite the Order dated 27.10.2023, the concerned Officer In-Charge of the concerned Police Station has not yet registered a case and if the petitioner approaches the jurisdictional Magistrate under Section 156[3], CrPC, the jurisdictional Magistrate shall ensure that the case is registered and, if *prima facie* he is satisfied, a proper investigation in the matter and if required, shall also monitor the investigation. It is further observed that if the jurisdictional Magistrate deems it

necessary, he can also recommend to the concerned Superintendent of Police a change of the Investigating Officer so that a proper investigation is done. The petitioner is at liberty, at the time of approaching the jurisdictional Magistrate, to produce any supporting materials with regard to the claim that no case has been registered by the Officer In-Charge, Dispur Police Station despite the Order dated 27.10.2023.

JUDGE

Comparing Assistant