

GAHC010025372024



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

Case No. : WP(C)/887/2024

BIDHU CHANDRA DAS
S/O LATE NITYA GOPAL DAS,
VILL. AND P.O.- NUTAN KANCHANPUR, P.S.- SILCHAR SADAR, DIST.-
CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPTT., DISPUR, GUWAHATI- 6.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
P.O.- GUWAHATI- 781007
ASSAM.

4:SUPERINTENDENT OF POLICE
CACHAR
SILCHAR.

5:THE OFFICER-IN-CHARGE
SILCHAR SADAR POLICE STATION
P.O.- SILCHAR- 788001
DIST.- CACHAR
ASSAM.

6:BHADHURI KURMI
W/O LATE LAKSHMICCHARAN KURMI

VILL. AND P.O.- NUTAN KANCHANPUR
P.S.- SILCHAR SADAR
DIST.- CACHAR
ASSAM

Advocate for the Petitioner : MR. S DAS
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

21.02.2024

Heard Mr. S. Das, learned counsel for the petitioner and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 1 – 5.

2. The instant writ petition under Article 226 of the Constitution of India is preferred seeking a writ in the nature of mandamus to direct the respondent authorities, more particularly, the respondent no. 5, that is, the Officer In-Charge, Silchar Police Station, to register a case on the basis of a First Information Report [FIR] dated 22.09.2023 lodged by the petitioner, and to make investigation of the case and to ensure action against the respondent no. 6.

3. The case projected by the petitioner in the instant writ petition, in brief, is that :- the petitioner entered into an agreement for sale of a plot of land measuring 1 Bigha, covered by Dag no. 132, 133 & Patta no. 1 of 2nd R.S. Porgona Chatla, Mouza – Notun Kanchanpur, Silchar [Sadar], District – Cachar [‘the subject-land’, for short] with the respondent no. 6 and the sale price of the subject-land was fixed at Rs. 3,00,000/-. The petitioner has stated that an amount of Rs. 70,000/- was paid to the respondent no. 6 as advance money in presence of attesting witnesses. The respondent no. 6 assured that a sale deed would be executed with the petitioner within a period of 8 [eight] months if the petitioner would pay the

outstanding amount of Rs. 2,30,000/-. When the petitioner enquired about the landholding right of the respondent no. 6, it came to the knowledge of the petitioner that the respondent no. 6 had no landholding right in Patta no. 1 of the subject-land. Rather, the name of the respondent no. 6 appears in Patta no. 2. When the petitioner approached the respondent no. 6, the respondent no. 6 refused to execute any sale deed on the basis of the agreement for sale executed earlier in respect of the subject-land and the petitioner had to institute a title suit, Title Suit no. 144/2023 for specific performance before the Court of learned Munsiff no. 4, Cachar at Silchar and the said title suit is pending as on date. The petitioner has further stated that the petitioner had lodged a First Information Report [FIR] before the Officer In-Charge, Silchar Police Station on 22.09.2023 alleging *inter alia* that the respondent no. 6 used to roam around the house of the petitioner threatening to kill the petitioner and his children. It is the allegation of the petitioner that despite lodging the FIR on 22.09.2023 alleging commission of cognizable offences, the Officer In-Charge, Silchar Police Station has not registered a case till date.

4. On a query made to the learned counsel for the petitioner, the learned counsel for the petitioner has submitted that the petitioner has neither approached the jurisdictional Superintendent of Police nor approached the jurisdictional Magistrate till date with the grievance that the FIR lodged on 22.09.2023 by him has not yet been registered by the Officer In-Charge, Silchar Police Station.

5. In this connection, it would be apposite to refer to the following observations made by the Hon'ble Supreme Court of India in Sakiri Vasu vs. State of Uttar Pradesh and others, reported in [2008] 2 SCC 409, :

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154[3] Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 [3] Cr.P.C. before the

learned Magistrate concerned. If such an application under Section 156 [3] is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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13. The same view was taken by this Court in Dilawar Singh vs. State of Delhi [vide para 17]. We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156[3] CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order order[s] as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156[3] CrPC.

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15. Section 156[3] provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. 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.

16. The power in the Magistrate to order further investigation under Section 156[3] is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173[8]. Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. J.A.C. Saldanha [SSC AIR para 19].

17. In our opinion Section 156[3] CrPC is wide enough to include all such powers in a

Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156[3] CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

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24. In view of the abovementioned legal position, we are of the view that although Section 156[3] is very briefly worded, there is an implied power in the Magistrate under Section 156[3] CrPC to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156[3] CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154[3] and Section 36 CrPC before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156[3].

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154[3] CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156[3] CrPC instead of rushing to the High Court by way of a writ

petition or a petition under Section 482 CrPC. Moreover he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly [though he cannot investigate himself]. The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154[3] before the concerned police officers, and if that is of no avail, under Section 156[3] CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.”

6. The observations made by the Hon’ble Supreme Court of India in Sakiri Vasu [supra] have again been reiterated in the subsequent decision in Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others, reported in [2016] 6 SCC 277, in the following manner :

"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. The observations made in Sakiri Vasu [supra] and Sudhir Bhaskarrao Tambe [Supra] have also been followed in the three-Judges Bench decision in M. Subramaniam and another vs. S. Janaki and another, reported in [2020] 6 SCC 728.

8. In view of the above fact situation obtaining in the case, as have been projected briefly above, and in the light of the observations of the Hon'ble Supreme Court of India in Sakiri Vasu [supra] and Sudhir Bhaskarrao Tambe [supra], this writ petition seeking the above direction is not entertained, reserving the liberty, however, to the petitioner to avail the remedy of approaching the jurisdictional Superintendent of Police under Section 154[3] and/or the jurisdictional Magistrate under Section 156 [3], CrPC, if so advised. While not entertaining the writ petition, this Court would like to clarify that this Court has not expressed any opinion on merits and whether any cognizable offence is made out or not. Taking cue from M. Subramaniam and another [supra], it is also clarified that a civil dispute should not be given colour of criminal offence and at the same time, pendency of a civil dispute cannot

be a ground and justification not to register and investigate a FIR, if commission of a criminal offence has been made out.

JUDGE

Comparing Assistant