
(2019) 09 MAN CK 0025
In the Manipur High Court
Case No : Writ Petition (c) No. 789 Of 2019

Khaimuanthang

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 156(3)
Indian Penal Code, 1860 — Section 34, 186, 332, 353

Citation : (2019) 09 MAN CK 0025

Hon'ble Judges : Ramalingam Sudhakar, CJ;M.V. Muralidaran, J

Bench : Division Bench

Advocate : Khalter Khampa, R.K.Umakanta

Final Decision : Dismissed

Judgement

R.S., CJ

[1] Heard Mr. Khalter Khampa, learned counsel for the respondent and Mr.R.K.Umakanta, learned Government Advocate for the State respondents.

[2] The petitioner in this case is an individual, who claims to be a Convenor of Joint Action Committee, a Committee formed for seeking justice for one Assistant Sub-Inspector (ASI),Thangzason Guite. If admittedly the victim, the so called officer, has suffered some injury by the assault by a group of 20 young men, an FIR has been already lodged at Churachandpur Police Station in FIR No.115(09) 2019 CCP-PS u/s 332/353/186/34 IPC dated 01.09.2019, then it is for the officer, namely, Assistant Sub-Inspector(ASI), Thangzason Guite to pursue his rights and proceed in accordance with law.

[3] In the present case, we do not find any statement by the petitioner as to how he is connected with the Assistant Sub-Inspector(ASI), Thangzason Guite and para No.2 of the affidavit, the petitioner merely says that he is the convenor of the "Joint Action Committee-Justice for ASI Thangzason Guite". We are afraid

that this does not give right to the petitioner to file writ petition Article 226 of the Constitution of India to plead the cause of Assistant Sub-Inspector(ASI), namely, Thangzason Guite. In any event, in respect of the incident which is stated in the petition, when admittedly the FIR has been registered, the consequence has to follow. The question of this Court issuing a writ of mandamus will not arise in the light of the Hon'ble Supreme Court 's decision in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others. The same is as follows:-

"1. Leave granted. These two appeals have been filed against the common impugned judgment of the High Court of Bombay dated 8-9-2009. The facts in detail have been set out in the impugned judgment and hence we are not repeating the same here. By the impugned order, the Bombay High Court has, in para 9 of its order, changed the investigating officer and appointed a Special Investigating Officer to investigate into the alleged offence.

2. This Court has held in *Sakiri Vasu v. State of U.P* *Sakiri Vasu v. State of U.P*, 2008 2 SCC 409, 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 the 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.

5. The appeals are allowed in the above terms. In view of the aforesaid order, no orders need be passed on the application for intervention and it is disposed of accordingly."

The Hon'ble Supreme Court in that case followed the earlier case of Sakiri Vasu v. State of U.P. reported in (2008) 2 SCC 409. The facts of the present case is similar to the reported case.

[4] In the present case, we find the mandamus has been filed by a totally unrelated person . The individual has not pleaded that his right has been affected. He has no authority to file the writ petition on behalf of the Assistant Sub-Inspector(ASI), Thangzason Guite.

In any event, it is for the victim to work out his remedy in accordance with law if no action is taken on the FIR.

[5] We find the writ petition filed Article 226 of the Constitution of India by a person claiming to be a Convenor and without any reasonable cause as not maintainable and totally untenable in law.

[6] In view of the Hon'ble Supreme Court decision in the case of Sudhir Bhaskarrao Tambe case(supra), we are unable to consider the relief as prayed for by the petitioner. Accordingly, we dismissed the writ petition.