

(2019) 04 J&K CK 0092

In the Jammu And Kashmir High Court

Case No : CONOW No. 18 Of 2016, OWP No.779 Of 2013, IA No.1084 Of 2013

Parshotam Kumar And Ors

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 156(3)
Constitution Of Jammu And Kashmir, 1956 — Section 103
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 J&K CK 0092

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Garima Gupta

Judgement

1. In this writ petition filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K State, the petitioners inter alia seek the following reliefs:-

"Writ of mandamus commanding the respondent No.2 to register FIR against respondent Nos.3,7 to 10 for breaking the Bhati installed for straitening the Bamboos situated at National highway Chak Dayala by the petitioners in Khasra No.212/113 (ole) new 86 measuring 7marlas and 11 kanals 17 marlas Gair Mumkin Thanger (wrongly shown as Rode) situated at Village Langrial Tehsil Hiranagar District Kathua on 27.05.2013 caused damage to the tune of Rs.20,000/- and tried to disposes the petitioners with the help of Police illegally and also threatened the petitioners to vacate the premises well knowing that the petitioners have purchased the land from one Songa S/o Devi Singh caste Jat Bagoch R/o Langrial Tehsil Jasmirgarh vide sale deed dated 16, Bhadon, 2000 BK registered by Sub Registrar Kathua on same day and the petitioners are owners and in physical possession of the same according to 1/3rd share in the land.

2. The law is clear on the point that the writ petition cannot be filed thereby directing the police to register FIR. Reliance is also placed on the decision of

Hon'ble the Supreme Court in case titled, Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage reported in 2016 (6) SCC 277, wherein it has been held as under:-

"This Court has held in 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 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."

3. In present case, admittedly petitioner neither has complied with the mandatory provisions of Section 154 Cr.P.C nor has approached the magistrate concerned before knocking at the door of this Court.

4. In view of what has been discussed above and law on the subject, this petition is not maintainable. This petition is dismissed accordingly along with connected IA(s).

5. Condonation application also stands disposed of.