

(2021) 09 GUJ CK 0003
In the Gujarat High Court

Case No : R/Special Criminal Application No. 745 Of 2019

Sureshbhai Chimanlal Joshi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 36, 154(3), 156(3), 200, 482

Citation : (2021) 09 GUJ CK 0003

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Piyushkumar K Baseri, Krina Calla

Final Decision : ?Dismissed

Judgement

Ilesh J. Vora, J

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs:

"(A) YOUR LORDSHIP may be pleased to admit and allow the present petition by issuing a writ of mandamus or a writ in or direction commanding the respondent No.2 and 3 to register the FIR in pursuance of the complaint in writing dated 24.03.2018 which is Annexure: C against the accused mentioned therein and investigation the same in an independent and impartial manner forthwith in accordance with law.

(B) Pending admission hearing and final disposal of this petition YOUR LORDSHIP may be pleased to direct the respondent no.2 and 3 to investigate the complaint of the petitioner and to take appropriate action in accordance with law."

2. Heard Mr. Piyushkumar K. Baseri, learned advocate for the petitioner and Mrs. Krina Calla, learned APP for the respondent-State.

3. The writ petitioner has filed this writ petition for direction upon the respondent

No.2 and 3 to register the FIR in pursuance of the complaint in writing dated 24.03.2018 which is Annexure: C against the accused mentioned therein and investigation the same in an independent and impartial manner forthwith in accordance with law.

4. The grievance of the writ petitioner is that inspite of the aforesaid complaint, the concerned authorities have not registered the FIR and therefore, necessary direction to register the FIR against the accused persons is required to be given.

5. On the other hand, Mrs. Krina Calla, learned APP appearing for the respondent-State submits that approaching the Hon'ble High Court by filing application under Article 226 of the Constitution of India is not a proper remedy. She submits that the petitioner has remedy available under the provisions of the Criminal Procedure Code, 1973. Relying on the case of "Sakiri Vasu vs. State of Uttar Pradesh" reported in (2008) 2 SCC 409, she submits that the Magistrate concerned can direct for proper investigation.

6. In case of Sakiri Vasu (supra), the Hon'ble Apex Court has considered this aspect of the matter in paragraph nos.27 and 28 which reads as under:

"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 Cr.P.C. 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 Section 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

7. In case of "Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage" reported in (2016) 6 SCC 277, the decision of "Sakiri Vasu (supra)" was followed. In paragraph no.2 of the judgment, the Apex Court has held as under:

"2. 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) Cr.P.C. If such an application under Section 156(3) Cr.P.C. 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 is Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with the petitions praying for registration of the first information report or praying for a proper investigation."

8. A caution has been put at paragraph no.3 which reads as under:

"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 an proper investigation in the matter, and he can also monitor the investigation."

9. Applying the aforesaid dictum of law in the facts of the present case, when alternative remedy is available to the petitioner, this Court is not required to exercise its powers under Article 226 of the Constitution of India.

10. Accordingly, the present writ petition stands dismissed with a liberty to the writ petitioner to approach the jurisdictional Magisterial Court concerned by invoking the statutory remedy available under the provisions of the Criminal Procedure Code, 1973. Rule is discharged.

It is made clear that this Court has not examined the merits of the case.