

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 13169 of 2022

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ASHABEN MULJIBHAI GHORI
Versus
STATE OF GUJARAT

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Appearance:

MR PRAVIN GONDALIYA(1974) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3
MR RONAK RAVAL, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 20/01/2023

ORAL ORDER

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

“(A) That the Hon’ble Court may be pleased to admit this petition.

(B) That the Hon’ble Court may be pleased to allow this Special Criminal Application by issuing appropriate writ, order or direction and thereby direct the respondent no.2 to register the FIR against accused person pursuance to the complaint dated 19.10.2022 given by petitioner at Annexure-A which in turn received by respondent no.2 from the Mumbai Police and further be pleased to issue direction to the take appropriate action in accordance with law.

(C) Pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct respondents to register the FIR against accused person in pursuant to the complaint filed by petitioner dated 19.10.2022 the interest of justice.

(D) Grant such other and further relief(s) as deemed just and proper by this Hon'ble Court in the interest of justice."

2. Heard learned advocates for the respective parties.

3. The grievance of the writ petitioner is that inspite of the aforesaid representation, the concerned authority has not taken proper action and therefore, necessary direction to register the FIR is required to be given.

4. On the other hand, 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. It is submitted 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**, he submits that the Magistrate concerned can direct for

proper investigation.

5. 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.”

6. 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.PC 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.”

7. 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.”

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

9. Accordingly, the present writ petition stands ***disposed of*** 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.

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

Rakesh

(ILESH J. VORA,J)