

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Order: 21st March 2022**

+ **W.P.(CRL) 164/2022**

BASANTI DEVI MEHRA Petitioner
Through: **Mr. R. K. Ojha and Mr. Purushottam Sharma,**
Advocates

versus

STATE NCT OF DELHI & ORS. Respondents
Through: **Ms. Kamna Vohra, ASC for State with Insp. Hukam Singh, P.S. Dayal Pur, Delhi**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J. (ORAL)

1. The instant writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner *inter alia* seeking issuance of writ of mandamus for issuing direction to respondents no. 2 and 4 to take strict legal action against the accused and for providing protection to the life and property of the petitioner.

2. Mr. R K Ojha learned counsel appearing on behalf of the petitioner submitted that petitioner is an old and widowed lady, and a retired police officer is trying to grab her property situated at E1, Gali No. 1, H. No. 511, Nehru Vihar, Dayalpur, Delhi- 110094 with the assistance of local

police personnel. It is also alleged that the retired police officer is also harassing, threatening, and torturing the petitioner so that she is forced to leave her residence. Learned counsel further submitted that petitioner has written multiple complaints to different authorities including the Commissioner, Delhi Police, however no action has been taken.

3. *Per contra*, Mr. Kamna Vohra, learned ASC appearing for State and police officials vehemently opposed the instant writ petition and stated that the petitioner has alternate remedy to approach the magistrate for registration of FIR and the filing of writ petition is nothing but misuse of the provision. It is submitted that after perusing the writ petition, it is evident that there is no ground available for invoking the extraordinary powers of this Hon'ble Court under Article 226 of the Constitution. It is therefore submitted that the same is devoid of any merit and liable to be dismissed.

4. Heard learned counsels for parties and perused the record.

5. In order to appreciate the case at hand, it is pertinent to refer to the position of law laid down as to the exercise of the writ jurisdiction by the High Court.

6. In the case of *Whirlpool Corporation. v. Registrar of Trade Marks (1998) 8 SCC 1*, the Apex Court had held as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective

and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

7. The Hon’ble Supreme Court in the case of ***Sudhir Bhaskar Rao Tambe v. Hemant Yashwant Dhage (2016) 6 SCC 277*** has considered the law laid down by the Hon’ble Supreme Court in the case of ***Sakri Vasu v. State of UP (2008) 2 SCC 409*** and has held as under:

“2. This Court has held in Sakiri Vasu v. 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 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.”*

8. Recently, in ***Radha Krishan Industries v. State of Himachal Pradesh*** 2021 SCC OnLine SC 334, the Hon’ble Supreme Court has reiterated and summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Hon’ble Supreme Court has observed:

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the

High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

9. The principle that emerges from the aforementioned judgments is that the extraordinary writ jurisdiction is to be exercised only in rare cases or certain contingencies in the interest of justice, including the exceptional cases delineated above.

10. A Division Bench of the Allahabad High Court while deciding the case of ***Waseem Haider v. State of U. P. Through Principal Secretary Home, Lucknow and Ors.*** Misc. Bench No. 24492 of 2020, decided on 14th December 2020, was of the opinion that the power to issue a writ of mandamus has its own well defined self-imposed limitations, one of which is the availability of alternative efficacious remedy. In the aforesaid judgment, the Division Bench has exhaustively dealt with the alternative remedies available to a person aggrieved by non-registration of FIR by the police. The Bench *inter alia* held that:

"The writ remedy is extra-ordinary remedy and equitable remedy. Further, the writ Court need not entertain a writ petition merely because a case is made out of alleged inaction or negligent in acting on an issue by an authority vested with power, in these cases to register crime/to complete investigation into crime, if statutorily engrafted remedy is available to seek redress on such grievance. Even if, a case is made out on alleged illegal action by statutory authority, which require redressal, ordinarily writ Court does not entertain the writ petition if the aggrieved person has not availed other remedies, more so, such remedies are incorporated in a statute."

11. While explaining the remedies available under Cr.P.C., the Court also observed:

“Code of Criminal Procedure incorporates enough safeguards to victims and accused. It lays down detailed procedure in conducting investigation, filing of final report, taking of cognizance, conducting of trial. It provides enough safeguards against illegal action of police. It is a self contained code and comprehensive on all aspects of criminal law. A complainant has statutorily engrafted remedies to ensure that his complaint is taken to its logical end. Thus, he must first exhaust said remedies and cannot invoke extraordinary writ remedy as a matter of course, even when crime is not registered and there is no progress in the investigation.”

12. Thus, a writ to compel the police to conduct an investigation can be denied for not exhausting the alternative and efficacious remedy available under the provisions of the Code, unless the exceptions enumerated in the decision of Apex Court in the aforementioned judgment are satisfied. In the instant case, the petitioner is yet to exercise and exhaust the alternative remedies available under the provisions of the Code including approaching the Magistrate by taking recourse to Section 156(3) of the Code.

13. The petitioner has stated that she had lodged written complaints with Delhi Police, Delhi Commission for Women, Union Home Ministry, Prime Minister's Office complaining about the retired ACP. However, upon a query by the Court as to when and by what mode were the said complaints filed before the police, the petitioner failed to reply to the same to the satisfaction of the Court.

14. It is settled law that the power to issue writ has its own well-defined limitations imposed by the High Courts, one of which is the availability of alternative efficacious remedy. This Court is also of the opinion that the High Courts should not ordinarily, as a matter of routine, exercise its extraordinary writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available. Considering the law laid down by the judicial precedents, the procedure laid down by the Code of Criminal Procedure as well as the fact that alternate and efficacious remedy is available to the petitioner, this Court does not find any merit in the instant petition and hence, is not inclined to entertain the petition for exercising its extraordinary writ jurisdiction.

15. However, in the interest of justice, the petitioner is granted the liberty to approach the concerned police station and make a representation, upon the receipt of which the police shall take appropriate action, if required, in accordance with law.

16. Accordingly, the instant petition stands disposed of in the above terms.

17. Pending applications, if any, also stand disposed of.

(CHANDRA DHARI SINGH)
JUDGE

21st March 2022
gs/@k