

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 13.08-2021****Pronounced on 25-10-2021****WPCR No. 175 of 2021**

- Chhattisgarh Christian Forum Through President, Arun Pannalal, Aged About 70 Years, S/o Late Shri Henry Robert Pannalal, R/o 01, Nilanchal Vihar, Kachna Crossing, Khamhardih, Raipur, District Raipur (Chhattisgarh) Regd. Office- 01, Nilanchal Vihar, Kachna Road, Raipur District Raipur (Chhattisgarh) 492007

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home (Police), Mahanadi Bhawan, Mantralaya, Police Station Rakhi, New Raipur, District Raipur Chhattisgarh
2. Director General Of Police (D.G.P.) Police Headquarters (Phq) Near Mahanadi Bhawan Mantralaya, Police Station Rakhi, New Raipur, District Raipur (Chhattisgarh)
3. Inspector General Of Police (I.G.P.) Office Of Inspector General Of Police (I.G.P.) Sukma Range, District Sukma (Chhattisgarh)
4. The Collector, Sukma, District Sukma (Chhattisgarh)
5. Superintendent Of Police, Sukma, District Sukma Chhattisgarh.
6. Station House Officer, Police Station Khamhardih, District Raipur Chhattisgarh
7. Station House Officer, Police Station Errabore, District Sukma (Chhattisgarh)
8. Station House Officer, Police Station Lohandiguda, District Sukma (Chhattisgarh)
9. Sohan Potai, S/o Darbari Ram Potai, Aged About 65 Years R/o Mahurbandpara, Village Potagaon, District Kanker (Chhattisgarh)-494334

---- Respondents

For Petitioner	:	Ms. Fouzia Mirza, Sr. Advocate with Ms. Smitha Jha, Advocate
For State	:	Shri Animesh Tiwari, Dy. Advocate General

Hon'ble Shri Justice Narendra Kumar Vyas**C.A.V. ORDER**

1. The petitioner has filed the present petition alleging that the petitioner is a forum which is working for upliftment and betterment of the Christian society in the State of Chhattisgarh is subjected to violence and intimidation of the people of political influence, as such filed the



petition to direct the police authority to register FIR against respondent No. 9 on account of hate speeches against Christian religion.

2. The facts projected by the petitioner are that the Chhattisgarh Christian Forum through its president has filed an application before the Station House Officer, Khamhardih, District – Raipur for registration of FIR against one person respondent No. 9 alleging that on 08.01.2021 the petitioner has received a video through social media wherein before a public meeting respondent No. 9 was giving a speech, in which he has said against Christian religion and tried to provoke the general public against followers of the Christian religion. Respondent No. 9 gave inflammatory speech due to which people have started threatening the Christian followers, committing marpeet and destroyed their household property with the object that Christian followers should stop continuing Christianity. The petitioner has also made compliant before the Collector, Sukma on 25.11.2020 reiterating the same facts.
3. It is contended by the learned Senior Counsel for the petitioner that on the basis of some of the evidence and materials available with petition, it can be seen that offence has been committed by respondent No. 9 and on his instigation other villagers have started committing marpeet with the persons who follow Christianity and destroyed their property, household and caused injuries to them also. To substantiate her submission, she would refer to one incident alleged to have been occurred with Madvi Bheema who was resident of village Chingawaram district - Sukma. She has lodged FIR on 25.11.2020 against 16 people belonging to same village who had committed marpeet with her, destroyed her properties, household goods. This incident occurred because she follows Christianity.
4. The learned Senior Counsel would also refer to one complaint of Madvi Muka dated 25.11.2020, dated 03.01.2021 by Ganga Markam, complaint by Smt. Sunny Kunjam and on the basis of her complaint FIR has been registered on 08.01.2021 against three persons belonging to the village Korra Maharapara, Police Station – Gadiras reiterating the same incident but with different persons by different persons.





5. Learned Senior Counsel for the petitioner again referred to complaint of Lakham Kashyap dated 19.01.2021 made before police station Lohandiguda District Bastar narrating the same allegation. She would further submit that news were published on 08.01.2021 and 09.01.2021 against Christian followers and some people and it is alleged that some Christians and forums belonging to Christian religion are trying to convince the innocent tribes to convert their religion and follow Christian religion. On the basis of this factual matrix the petitioner has filed this petition and prayed for following reliefs:-

“10.1 That, this Hon’ble Court may kindly be pleased to call for the entire record concerning the case of the petitioners from the possession of the respondent authorities for its kind perusal.

10.2 That this Hon’ble Court may kindly be pleased to direct the respondent authorities to registered the F.I.R. against the respondent no. 9 who is Spreading hate against the followers of the Christian Religion and inflaming & inciting the people against the Christianity.

10.3 That the Hon’ble Court may kindly be pleased to direct the respondent authorities to take strict and necessary action against the miscreants in accordance with law and lodge F.I.R. against them who are unauthorizedly raising the houses of the complainants in the name of religion.

10.4 That this Hon’ble Court may kindly be pleased to direct the respondent authorities to take proper steps to ensure safety of life’s and liberty of the people who are following the Christian Religion who are victimized and tortured in the name of Religion.

10.5 That this Hon’ble Court may kindly be pleased to direct the respondent authorities to ensure peace by restraining certain committees formed in the village to harass the villagers, who are practicing Christianity and also thereby a peace committee may be formed in the village to ensure peace and harmony in the village.”

6. The State has filed their return in which they have stated that respondent No. 9 has neither stated anything against Christian religion nor has given any hate speech against Christian religion. Copy of statements of Sanjay Sodhi and Upendra Nayak are also annexed along with return. It has also been stated in the return that the statements of the Paster in the Catholic Church at Sukma as well





as Statement of Fabianus Ekka who is member of Catholic Church at Sukma were also recorded and alleged video was also played before them many times, but they have stated that there is no adverse remark against Christianity and no tempering with the video has been done. The statements of these witnesses are also annexed with the return. Therefore, it is contended that no cognizable offence is made out and accordingly a report dated 09.03.2021 was submitted by the police station – City Kotwali, Sukma to the Superintendent of Police, Sukma. The relevant para of the report is extracted below :-

“विशयांतर्गत संदर्भित पत्र के पालन पर कृपया सादर लेख हैं कि आवेदक श्री अरुण पन्नालाल, प्रेसीडेंट, छत्तीसगढ़ किश्चियन फोरम कुचना रायपुर (छ.ग.) ने अनावेदक श्री सोहन पोटाई के द्वारा दिनांक 08.01.2021 को संकमा जिला के आम सभा में ईसाई धर्म के बारे में विवादास्पद बातें, ईसाई धर्म के विरुद्ध भड़काऊ भाषण के संबंध में शिकायत प्रस्तुत कर भड़काऊ भाषण का वीडियो क्लिप प्रस्तुत किया है। इस संबंध में शिकायत पत्र थाना सुकमा को जांच हेतु प्राप्त हुआ है। आवेदन शिकायत जांच उप निरीक्षक मनोज कौशिक के द्वारा किया गया है तत्संबंध में जांच दौरान सुकमा के उस सभा में सम्मिलित लोगों का कथन लिया गया जिन्होंने अपने कथन में शिकायत ईसाई धर्म के विरुद्ध श्री सोहन पोटाई के द्वारा किसी प्रकार का भड़काऊ भाषण नहीं देना बताया है। जप्तशुदा सफेद रंग का सोनी कंपनी का 08 जी.बी. का पेन ड्राईव को समक्ष पंचनामा गवाहान दीनबधु कुजूर पिता श्री कल्याण कुजूर उम्र 37 वर्ष एवं फबियानुस एक्का पिता फांसिस एक्का उम्र 72 वर्ष साकिनान सम्राटनगर सुकमा के समक्ष भीलबंद पैकेट से निकालकर कम्प्यूटर द्वारा अलग अलग प्लेयर में चलाकर देख गया, जिसमें उक्त शिकायत से संबंधित किसी प्रकार का ईसाई धर्म के बारे में विवादास्पद बातें, ईसाई धर्म के विरुद्ध भड़काऊ भाषण का वीडियो क्लिप नहीं है। समक्ष गवाहों के पंचनामा तैयार कर एवं कथन लेखकर संलग्न किया गया है। जांच पर शिकायत आवेदन में किसी प्रकार का संज्ञेय अपराध का होना नहीं पाया गया।”

7. It has also been contended by the learned counsel for the State with regard to complaint dated 25.11.2020, 03.01.2021, 07.01.2021 and 19.01.2021 that the said complaints are not related with respondent No. 9, they are concerned with some other miscreants and in the said complaints appropriate actions have been taken against them. The complaint which has been made against respondent No. 9, the police authorities have made elaborate inquiry and recorded the statements of concerned members of the public meeting as well as the statements of the members of the Christian community and it has been found that no cognizable offence is made out. Therefore, the writ petition deserves to be dismissed.
8. During pendency of the petition, the petitioner has filed affidavits of some persons to substantiate his contention that respondent No. 9 has given hate speech. From the facts projected by the petitioner and





the contention of the State, it is quite clear that there are disputed facts required to be ascertained which cannot be carried out by this Court while hearing the writ petition under Article 226 of the Constitution of India.

9. Learned Senior Counsel for the petitioner refers to judgment of the Hon'ble Division Bench of this Court in Writ Appeal No. 228/2016 decided on 29.11.2016 and submits that when a cognizable offence is made out, FIR should be registered against the accused. paragraphs 7,8 and 9 of the said judgment is reproduced below:-

“7. Since the matter has been now decided by the Constitutional Bench, this Court is not required to do anything more but to reiterate whatever has been stated by the highest Court on the land and which is law within the meaning of Article 141 of the Constitution of India. In Lalita Kumari vs. Government of Uttar Pradesh & Others (supra), the Apex Court also directed that the judgment be circulated to all the concerned including all the judicial officers in India as well as all the Police Officers in the country. After this, we would expect that the law as laid down by the Apex Court having been specifically brought to the notice of all concerned would be followed in its letter and spirit. The recording of FIR is mandatory once the information which is given to the Police Officers whether orally or in writing discloses the commission of cognizable offence.

8. On going through the complaint, Exhibit P-7, not one but many cognizable offences are mad out. Therefore, it was incumbent upon the Police Officers concerned that is the In-Charge, PS. Baikuntapur, Korea to record the FIR. This Court in Writ Petition (Cr.) No.9/2016 dated 26.8.2016 had already given directions in this regard and had directed that this judgment be circulated to Director General of Police, Chhattisgarh.

9. We make it clear that we have not made any comment on the merits of the case. The complaint may be false or true. That is not for us to decide. However, since the complaint discloses the commission of a cognizable 9 offence, FIR should have been recorded and the matter should have been investigated. After investigation, if the Police finds no evidence against the complainant, it can submit a report accordingly before the Magistrate in which event, the Magistrate will have to give notice to the complainant who shall have to be heard in the matter. In case the Police finds that some case is made out, then it will file charge sheet in terms of Section 157 Cr.P.C.”

10. The said judgment of the Hon'ble Division Bench of this Court is distinguishable on the facts of the present case as on the basis of the





complaints made by the petitioner has already been examined and it has been found that no cognizable offence is made out. It is worthwhile to mention here that as submitted by the learned Senior Counsel the FIR has been registered for the incident which has been committed against some persons who are following Christianity, FIR has already been registered and matters are still under investigation, therefore, the members of the Christian community are being harassed, cannot be adjudicated by this Court.

11. Learned Senior Counsel for the petitioner has submitted affidavits of about 30-40 persons that respondent No. 9 has given hate speech. Again this is a fact which is to be enquired. This Court cannot visualize the fact whether these persons were present at the time of public meeting or not. The authenticity and correctness of the allegations made in the affidavits can be examined by the trial Court only. Even from the bare perusal of the relief clause 10.3, it is quite clear that the petitioner has intended that FIR should be registered against respondent No.9. The Hon'ble Supreme Court has time and again deprecated filing of such petition for registration of FIR.

12. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, has examined the issue in paragraphs 27 and 28 and held 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 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.”

13. The judgment passed by Hon'ble the Supreme Court in **Sakiri Vasu** (Supra) has again come up for consideration before three judges

¹ (2008) 2 SCC 409



bench in case of **M. Subramaniam & another Vs. S. Janaki & another**². The Supreme Court after considering the same judgment has held at para 7 & 9 which are as under:-

“7. The said ratio has been followed in ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, in which it is observed: (SCC p. 278, paras 2-4)***

“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

² (2020) 16 SCC 728





impugned order of the High Court.”

9. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18-09-2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest.”

14. From analysis of the above legal provisions, it is crystal clear that the writ petition under Article 226 of the Constitution of India is not maintainable before the High Court. However, it is open to the petitioner to approach the court of Judicial Magistrate First Class having territorial jurisdiction over the place of offence if it deemed appropriate and necessary for filing of complaint under Section 156(3) of Cr.P.C or Section 200 of Cr.P.C. and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C. It is made clear that this Court has not expressed any opinion on merits of the case whether the averments made in the petition discloses any criminal offence or not, it is for the concerning Magistrate to decide the case on merits of the case without being influenced by any of the observations made by this Court.
15. Considering the facts and materials on record and in view of the law laid down by the Hon'ble Supreme Court, this Court is of the view that this writ petition is not maintainable.
16. With the aforesaid observations, the writ petition (criminal) is finally disposed off with the aforesaid liberty in favour of the petitioner.

Sd/-
(Narendra Kumar Vyas)
Judge