

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.127 OF 2017

Devidas Parshuram Gawai ... **Petitioner**

V/s.

The State of Maharashtra & Ors. ... **Respondents**

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Mr.Prashant D. Patil, Advocate for the Petitioner.

Mr.H.J.Dedia, APP for the Respondents No.1 and 2.

Mr.Chirag Sule i/b. Mr.Jitendra Sule, Advocate for Respondent Nos.3 and 4.

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**CORAM : SMT.V.K.TAHILRAMANI &
A. M. BADAR JJ.**

DATED : 27nd FEBRUARY 2017.

P.C.

1 Heard the learned counsel for the petitioner, the
learned counsel for the respondent Nos.3 and 4 and learned
Additional Public Prosecutor for the Respondent Nos.1 and 2.

2 It is the case of the petitioner that he had taken
premises on Leave and License basis from respondent Nos.3
and 4. The period for which he took the premises on Leave
and License was from 26th September 2016 to 25th

September 2019. It is his case that though the period of leave and license was up to 25th September 2019, he was dispossessed from the premises on 16/11/2016.

3 The case of the petitioner is that he has been dispossessed on 16/11/2016. The grievance of the petitioner is that though he has made a complaint to the police station i.e. Sewree Police Station, Belapur, Navi Mumbai, the police stated that it is a civil dispute, hence no action was taken on his complaint.

4 In fact, if F.I.R. is not registered by the Police on complaint of cognizable offence being made to the police, the proper remedy to be adopted by the complainant is filing a complaint before the Magistrate.

5. It has been held as above by the Apex Court in the case of **Aleque Padamsee Vs. Union of India**¹. It has been further reinforced by the following observation of the Apex Court in the case of **Sakiri Vasu Vs. State of U.P.**²:-

"24. In view of the above mentioned legal position, we are of the view that although Section

1 (2007) 6 SCC 171

2 (2008) 2 SCC 409

156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternative remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first

remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

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 Sections 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 view of the aforesaid, the instant Petition is disposed of by relegating the Petitioner to appropriate remedy before the Magistrate, who shall be at liberty to pass any appropriate order, as deemed proper in the matter.

7 Looking to the nature of the dispute, *prima facie*, it does appear that it is of civil nature. In such case, the petitioner should have sought relief of restoration of possession under the specific Relief Act. It would be open for the petitioner to take steps with regard to it, if permissible in law at this stage. Contentions of both the sides are left open.

8 In view of the above, no case is made out for interference, and writ petition is rejected.

(A. M. BADAR J.) (SMT. V. K. TAHILRAMANI J.)