

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION (CWP) NO. 308 OF 2019**

(Dr. Yogesh s/o Pralhad Shende & Anr. vs. The Commissioner of Police, Nagpur & Ors.)

---

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

Shri R.S. Parsodkar, Advocate for the petitioners.  
Shri M.K. Pathan, APP for respondent Nos. 1 to 3.  
Shri Amit Khare, Advocate for respondent No. 4.

.....

**CORAM : P.N. DESHMUKH &  
PUSHPA V. GANEDIWALA, JJ.  
JULY 23, 2019.**

Heard Shri Parsodkar, learned counsel for the petitioners, Shri Pathan, learned APP for respondent Nos. 1 to 3 and Shri Khare, learned counsel for respondent No. 4.

The prayer clauses (1) and (2) in this petition is for quashing of notice dated 20.03.2019 and for issuing directions to respondent Nos. 1 to 3 to not to take coercive steps against the petitioners in pursuance of notice dated 20.03.2019 issued to them. The prayer clause (3) is to issue directions to respondent No. 1 to register FIR against respondent No. 4.

Admittedly, in compliance to notice dated 20.03.2019, after this court clarified that not to take coercive action does not include stay to investigation, the petitioners attended the police, who had issued

said notice. In that view of the matter, no relief as prayed for in clauses (1) and (2) of the petition can be granted. The subsequent prayer clause (3) is to issue directions to respondent No. 1 to register FIR against respondent No. 4.

In view of the law laid down in the case of Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage & Ors., reported at (2016) 6 SCC 277, the petition is not liable to be entertained. Paras 2 and 3 of the said judgment of the Hon'ble Apex Court, which are relevant, are reproduced as under :

“2) This Court has held in *Sakiri Vasu v. State of U.P.* {(2008) 2 SCC 409}, 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 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) Cr.P.C. 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.”*

In that view of the matter, even prayer (3) in the petition cannot be allowed. However, having considering the fact that there is reference to report lodged against the petitioners in the notice issued on 20.03.2019 wherein they were called to attend police, we direct respondent Nos. 1 to 3 to issue 48 hours clear notice to the petitioners in the event any offence is registered against them on the basis of report lodged by respondent No. 4.

Criminal Writ Petition is disposed of in above terms.

**JUDGE**

**JUDGE**