

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT APPEAL No.238 of 2019

JUDGMENT: *(per the Hon'ble Justice Sri A.Rajasheker Reddy)*

This appeal, under Clause 15 of Letters Patent, is preferred against the order dated 22.02.2019 passed by the learned Single Judge in W.P.No.1986 of 2019.

2. The appellant herein filed the writ petition alleging inaction of the respondent-police in conducting investigation into the complaint dated 14.01.2019 and the consequential complaint dated 24.01.2019 lodged with respondents 3 and 4 respectively. In view of the information furnished to the petitioner that the allegation in the complaint is civil in nature, the writ petition was dismissed. Hence, this appeal.

3. Learned counsel for the appellant-writ petitioner submits that without registering FIR, the police cannot close the complaint stating that the allegation in the complaint is civil in nature. He also submits that the learned Single ought to have directed the higher authorities of respondents 3 and 4 to take action against them.

4. The learned Government Pleader for Home, by relying on the judgment of the Hon'ble Supreme Court in ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & others***¹, submits that the appellant was informed that the

¹ 2016 (6) SCC 277

allegation made in its complaint is civil in nature and that if the appellant has any grievance, it can seek alternative remedy.

5. The Hon'ble Supreme Court in ***Sudhir Bhaskarrao Tambe's case***, observed as follows:

“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.

In view of the settled position in *Sakiri Vasu Case*², 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.”

6. Admittedly, the complaint of the appellant was considered and it was informed that the allegation in the

² (2008) 2 SCC 409

complaint is civil in nature. In view of the same, and in the light of the law laid down by the Hon'ble Supreme Court in ***Sudhir Bhaskarrao Tambe's case***, we do not see any illegality or infirmity in the impugned order warranting interference in this intra-Court appeal.

7. The writ appeal is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 19.03.2019
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