

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1987 OF 2010**

Rasilaben Pravinbhai Soni & Anr.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr.Udayan S. Jain for Petitioners.

Mr.S.S. Hulke, A.P.P for Respondent No.1-State.

CORAM : A.S. GADKARI, J.

DATE : 17th June 2022.

PC. :

1. Petitioners are having substantive alternate remedy at their disposal by way filing an application for discharge under Section 227 of the Criminal Procedure Code or to participate in the trial.

2. It is the settled position of law and as has been decided in a catena of decisions by Hon'ble Supreme Court, ordinarily the Court will not entertain a Petition under Article 226/227 of the Constitution of India, where the Petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well-recognized principle which gained judicial recognition that, the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy.

Reliance is placed on the following decisions-

- i) *Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri & Ors. reported in AIR 1964 SC 1419 .*
- ii) *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors. reported in (2000) 7 SCC 695.*
- iii) *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329.*
- iv) *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. reported in (2015) 5 SCC 423.*
- v) *Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr. Reported in (2019) 419 ITR 440 (SC).*
- vi) *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors. reported in (2019) 9 SCC 538.*

3. In view thereof, learned Advocate for the Petitioners seeks leave to withdraw present Petition with liberty to adopt appropriate alternate remedy as may be permissible under the law.

Leave and liberty granted.

4. Petition is disposed off as withdrawn with aforesaid liberty.

5. Since the Sessions Case is of the year 2009, in case the Petitioners file an application for discharge, the learned Additional Sessions Judge, Vasai, seized of Sessions Case No.60 of 2009 is hereby requested to dispose of the said Application as expeditiously as possible.

[A.S. GADKARI, J.]