

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 1879 OF 2022**

Suman w/o Ramchandra Karanjavane

... Petitioner

V/s.

State Of Maharashtra And Ors.

... Respondents

WITH**INTERIM APPLICATION NO. 2752 OF 2022**

Symbiosis Through Ramesh Dashrath Hande

... Applicant

V/s.

State Of Maharashtra And Anr.

... Respondents

Mr. Nitin Gaware for Petitioner.

Ms. Vrushali L. Maindad a/w Mr. Ravi Bhardwaj for Intervenor/Applicant.

Ms. P. P. Shinde APP, for Respondent-State.

Mr. S. E. Holkar, HC, Paud Police Station, Pune.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.****DATE : 16th NOVEMBER, 2022.****PC. :**

1. By the present Petition, Petitioner is seeking registration of crime on the basis of his complaint against certain persons.

2. Petitioner has a substantive alternate remedy available under the provisions of Criminal Procedure Code and without availing such a remedy, Petitioner has directly approached this Court. Even otherwise, a Writ Petition

under Article 226 of the Constitution of India for lodgment of FIR is not

This Order is modified/corrected by Speaking to Minutes Order dated 24/11/2022.

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maintainable. Reliance is placed on the following decisions:-

- (i) *All India Institute of Medical Science Employee's Union (Regd.) Through its President Vs. Union of India & Ors. reported in (1996) 11 SCC 582;*
- (ii) *Gangadhar Janardhan Mhatre Vs. State of Maharashtra & Ors., reported in 2005 SCC (Cri) 404;*
- (iii) *Aleque Padamsee & Ors. Vs. Union of India & Ors., reported in (2007) 6 SCC 171 (3 Judges of SC);*
- (iv) *Sakiri Vasu Vs. State of Uttar Pradesh & Ors., reported in (2008) 2 SCC 409 and*
- (v) *Sunil Jabarchand Modi Vs. State of Maharashtra & Ors. (Cri. W.P. 317/2011 dated 8.12.2011).*
- (vi) *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors., reported in (2016) 6 SCC 277.*
- (vii) *M. Subramaniam & Anr. Vs. S. Janaki & Anr., reported in (2020) 16 SCC 728.*

3. 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 the 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) *Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr. reported in (2019) 419 ITR 440 (SC) and*

(iii) *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors. reported in (2019) 9 SCC 538.*

4. In view of the above, learned Advocate for the Petitioner seeks leave to withdraw present Petition with liberty to file a private complaint if so advised and as may be permissible under the provisions law.

Leave and liberty granted.

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

6. In view of disposal of Petition, Interim Application No. 2752 of 2022 does not survive and is accordingly disposed off.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]