

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4253 OF 2022

Bharat Kanji Maskai

... Petitioner

V/s.

The Deputy Commissioner Of Police And Anr.

... Respondents

Mr. Rajendra Sorankar i/b Mr. Ketan Dabke for Petitioner.

Ms. S. D. Shinde APP, for Respondent No.2-State.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 5th DECEMBER, 2022.

PC. :

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

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 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.,
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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.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]