

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 6618 OF 2021

Dilip Babulal Ranka	...Petitioner
vs.	
The State of Maharashtra and Ors.	...Respondents

Mr. V. S. Tadke - Advocate for the Petitioner
Mr. J. P. Yagnik - APP for the Respondent-State

**CORAM : PRASANNA B. VARALE &
 S. M. MODAK, JJ.**

DATE : 11th APRIL, 2022

P. C. :-

. Not on board. Taken on board.

2. Mr. V. S. Tadke, the learned counsel for the Petitioner claims urgency. On the specific query put to the learned counsel for the Petitioner, it is submitted before this Court that the present Petition is filed at the instance of the Petitioner seeking direction to the Respondent-Police Authority for lodgment of the First Information Report against the Respondent Nos. 7 and 8. On further query put to the learned counsel for the Petitioner as to what steps would taken by the Petitioner the counsel for the Petitioner submits that the initially Petitioner has approached the Police Authorities and Police Authorities has lodged the Non cognizable matter and the offence attracted against the accused person is under

Section 323 of the Indian Penal Code and again query put to the learned counsel for the Petitioner whether the Petitioner is prevented from taking appropriate course of action as provided under the provision of law in case the Police authority fails to consider the grievance of the disclosure of non-cognizable offence. The counsel for the Petitioner submits before this Court that though the Petitioner can approach Magistrate by filing complaint taking recourse to the provisions under Section 156(3) of the Code of Criminal Procedure. The Magistrate Court may only call the report and on the report submitted by Police Authorities, the Magistrate may not pass the Order of registration of offence against the accused person under Section 327 of Indian Penal Code.

3. Now then submissions are only on the assumption and presumption of the Petitioner. The Petitioner firstly, have not approached the Magistrate by taking recourse to the legal provision. Secondly, assuming that the Magistrate would be swayed away only on the report submitted by the Police agency to the Magistrate is leading to a submission that the Magistrate would pass a mechanical Order and would not apply his mind.

4. We are unable to accept such submissions. The learned Magistrate on receipt of the report would certainly apply his mind and pass appropriate Order. There is no reason for us to believe that the Magistrate would swayed away only on submitting the report by the Police agency to

the Magistrate. Thus the Petition which proceeds only on the assumption and presumption of the Petitioner and some erroneous impression of the Petitioner cannot be entertained in this Court.

5. Accordingly, we are not inclined to entertain the Petition. As such the Petition is dismissed as threshold. We further make it clear that the even Petition is dismissed by us, in case the Petitioner is advised to take appropriate steps by taking recourse to the provisions of law, the Petitioner is at liberty to apply those steps, if so advised and dismissal Order of this Court would not come in the way of the Petitioner in that circumstances.

6. With these observations, the Petition is dismissed.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)