

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.2077 OF 2019

**KASHINATH S/O. KUNDLIK DONGARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. S. T. Shelke, Advocate for the petitioner
Mr. M. M. Nerlikar, APP for the respondent/State
Mr. R. R. Karpe, Advocate for respondent Nos. 8 and 9.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 31ST JANUARY, 2023

PER COURT :-

1. By this petition the petitioner has sought directions as against respondent Nos. 1 to 7 to register FIR against respondent Nos. 8 to 11 and other for committing offences against him. Learned counsel for the petitioner states that he is not pressing prayer clause (C) and (E) at this stage.

2. Learned counsel for the petitioner states that the petitioner has already filed a complaint and the police had not a registered the crime. It is not in dispute that the petitioner has not filed an application under Section 156(3) of Cr.P.C. and had directly approach this Court for directions to the respondents to register the crime. In the ***M. Subramaniam and another Vs. S. Janaki and another*** reported in **(2020) 16 SCC 728** the Hon'ble Supreme Court has reiterated the principles laid down in ***Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and Others, (2016) 6 SCC 277*** wherein it is held that if a person has a grievance that his FIR has not been registered by

the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C. It is also observed that if such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. It is further held 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 the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) of Cr.P.C.

3. In the light of above we are not inclined to issue any such directions and we dismiss the petition with liberty to file application under Section 156(3) of Cr.P.C.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp