

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3346 OF 2023**

My Own Eco Energy Private Ltd., And Anr. ... Petitioners

V/s.

State Of Maharashtra And Anr. ... Respondents

Mr. Sanjeev Kadam i/b Mr. Vishwajeet Mohite for Petitioners.

Mr. H. J. Dedhia, APP for Respondent No.1-State.

Mr. Niranjan Bhavake i/b Bhavake And Associates for Respondent No.2.

**CORAM : A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 8th NOVEMBER, 2023.

PC. :

1) By the present Petition under Article 226 of the Constitution of India and under Section 482 of Criminal Procedure Code, Petitioners have prayed for quashing of R.C.C. No. 62 of 2022 pending on the file of learned Judicial Magistrate First Class, Radhanagari, District Kolhapur, arising out of C.R. No. 158 of 2019, dated 19th September, 2019 registered with Radhanagari Police Station, Kolhapur, under Sections 406, 420, 467, 468, 471 read with Section 34 Indian Penal Code.

2) Admittedly and even as per the pleadings of the Petitioner, after completion of investigation of present crime, police have submitted charge-sheet.

3) Petitioners thus are having a substantive alternate statutory remedy of filing an application for discharge, as contemplated under the provisions of Criminal Procedure Code, before the Trial Court.

4) 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.*

5) According to us, availing a statutory remedy, of filing an application for discharge before the Trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioner cannot be permitted to raise a specious plea calling upon this Court to adjudicate his innocence in a Petition under Article 226 of the Constitution of India. It is against the settled principles of law. At the same time, the Petitioner cannot be permitted to make the statutory provisions of the Code of Criminal Procedure otious, by directly approaching this Court under Article 226 of the Constitution of India.

6) Despite the aforesaid settled legal position, Mr. Kadam, learned counsel appearing for Petitioners insisted this Court to hear the Petition on merits and also to adjudicate the defence of the Petitioners in the present Petition filed under Article 226 of the Constitution of India. We are unable to accept the request of learned counsel in view of the settled position of law, as the defence of the accused can not be adjudicated in a Petition under Article 226 of the Constitution of India.

7) The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. Aryan Singh*, dated 10th April 2023 passed in Criminal Appeal No. 1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022) has held that, the High Court cannot conduct a mini trial for appreciation of evidence on record, while dealing with an application under Section 482 of Cr.P.C., as it is a mini trial and consider the applications as if those are against the judgment and Orders of the Trial Court on conclusion of trial.

As per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.P.C., the Court is not required to conduct a mini trial.

8) In view of above, by reserving the remedy of the Petitioners for filing an application for discharge before the Trial Court, Petition is disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

CHAITANYA
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JADHAV

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