



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 29 OF 2021

Usha Dilip Bhoge And Anr.

... Petitioners

V/s.

The State Of Maharashtra And Ors.

... Respondents

WITH

CRIMINAL WRIT PETITION NO. 31 OF 2021

Rohit Dilip Bhoge

... Petitioner

V/s.

The State Of Maharashtra And Anr.

... Respondents

Mr. Hemant Ingle a/w Mr. Pratik Ingle i/b Mr. Prashant Goyal for
Petitioner/s.

Mr. Ajay Patil, APP for Respondent-State.

Mr. Sukrut Mhatre for Respondent No.2.

CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.

DATE : 7th AUGUST, 2023.

PC. :

1. Present Petitions under Article 226 of the Constitution of India and under Section 482 of the Cr.P.C. are filed for quashing of R.C.C. No. 383 of 2020 pending on the file of learned Judicial Magistrate First Class, Vadgaon Maval, Pune, arising out of C.R. No. 865 of 2019 dated 19th December, 2019, registered with Talegaon Dabhade Police Station, Pune, under Sections 498A, 323, 504 506 read with Section 34 of the Indian Penal Code.

2. It is an admitted fact on record that, after completion of investigation, police have submitted charge-sheet. In view thereof, the

Petitioners are having substantive alternate remedy under the provisions of Cr.P.C., for discharge, before the trial Court.

3. It is the settled position of law and as has been decided in catena of decisions by the Hon'ble Supreme Court, ordinarily the Court will not entertain the 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 well recognized principle which gained judicial recognition that, the High Court should direct party to avail himself of such remedies, one or the other before he resorts to the constitutional remedy.

Reliance is placed on the following decisions :

- i) Thansingh Nathmal V/s. The Superintendent of Taxes, Dhubri & Ors., reported in AIR 1964 SC 1419.
- ii) A. Venkatasubbiah Naidu V/s. S. Chellappan & Ors., reported in (2000) 7 SCC 695.
- iii) Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil, reported in (2010) 8 SCC 329.
- iv) Radhey Shyam & Anr. V/s. Chabi Nath & Ors., reported in (2015) 5 SCC 423.
- v) Genpact India Private Limited V/s. Deputy Commissioner of Income-Tax & Anr., reported in (2019) 419 ITR 440 (SC).
- vi) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. V/s. Tuticorin Educational Society & Ors., reported in

(2019) 9 SCC 538.

4. According to us, filing an Application for discharge before the trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioners cannot be permitted to raise a spacious 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 Petitioners cannot be permitted to make the statutory provisions of the Code of Criminal Procedure, 1973 otious, by directly approaching this Court under Article 226 of the Constitution of India.

5. The Hon'ble Supreme Court in the case of Central Bureau of Investigation V/s. 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.PC., 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 principal of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.PC, the Court is not required to conduct a mini trial.

6. In view of the above and by reserving the alternate remedy in favour of Petitioners, before the trial Court, both Petitions are disposed off.

7. All contentions of both the parties are kept open.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)