

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 733 OF 2020**

Dr. Vidya Balasaheb Karvekar

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

WITH**CRIMINAL WRIT PETITION NO. 988 OF 2020**

Dr. Varsha Vikas Kirpekar

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Ritesh Thobde for Petitioners.

Mr. S.S. Hulke, A.P.P. for Respondent No.1-State.

Mr. Vedant Bonde i/b. Mr. Onkar A. Mane for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 1st August 2023.****P.C. :**

1. Present Petitions under Article 226 of the Constitution of India and Section 482 of the Criminal Procedure Code are filed by the Petitioners for quashing of CR No. 576 of 2019 dated 26th August 2019, registered with MIDC Police Station, Solapur, under Sections 376, 506, 312, 315, 201 of Indian Penal Code and Sections 4, 6, 8, 21(1)(2) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

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

Petitioners are having substantive alternate remedy by way of filing an application for discharge before the Trial Court.

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 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.*

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. In view of the above and by reserving the remedy of filing application for discharge before the Trial Court, both the Petitions are disposed off.

6. All contentions of both parties are kept open.

[SHIVKUMAR DIGE, J.]

[A.S. GADKARI, J.]

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