

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.2892 OF 2022**

Sony Thomas & Ors.

.. Petitioners

V/s.

State of Maharashtra & Anr.

.. Respondents

Ms. Krupa Rajani i/by Vidhya Iyengar a/w. Ms. Shrutika Mestri and
Ms. Pooja for Petitioners

Mrs. M. M. Deshmukh, APP for Respondent No.1 – State

Ms. Divya Parab for Respondent No.2

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

DATE : 16th JUNE 2023.

P.C. :

1. The present Petition under Article 226 of the Constitution of India is filed by the Petitioners for quashing of R.C.C. No. 285 of 2022 arising out of FIR No. 276 of 2020 registered with N.R.I. Sagari Police Station, Navi Mumbai for the offences punishable under Sections 307, 323, 341, 354A(1)(iv), 376, 377, 406, 498A, 504, 509 read with 34 of the Indian Penal Code, 1860.

2. It is admitted fact on record that, after completion of the investigation of present crime, police has submitted charge-

sheet. In view thereof, 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 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 Petitioners have 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 & Cors., 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. Petitioners cannot be permitted to raise a spacious plea calling upon this Court to adjudicate their innocence in a Petition under Article 226 of the Constitution of India. It is against the settled principles of law. At the same time, Petitioners cannot be permitted to make the statutory provisions of the Code of Criminal Procedure 1973 otiose, by directly approaching this Court under Article 226 of the Constitution of India.

5. In view of the above, by reserving the remedy of filing application for discharge under Section 227 of Cr.P.C. and/or to contest the said case, Petition is disposed of.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)