



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 116 OF 2023

WITH

INTERIM APPLICATION NO. 3367 OF 2023

Vikas Kalyanam Narayan

...Petitioner/Applicant

V/s.

The State of Maharashtra And Ors.

... Respondents

Mr. Sanjiv Punalekar i/b PRS Legal for Petitioner/Applicant.

Mr. Ajay Patil, APP for Respondent-State.

Mr. Dinesh Tiwari a/w Mikhail Dey i/b Dinesh Tiwari & Associates for Respondent Nos. 5, 7, 8.

**CORAM : A.S. GADKARI AND  
SHARMILA U. DESHMUKH, JJ.**

**DATE : 13<sup>th</sup> OCTOBER, 2023.**

**PC. :**

1) Admittedly, after completion of investigation of present crime, police have submitted charge-sheet. The Petitioner therefore is having substantive alternate statutory remedy under the provisions of Cr.P.C., before the trial Court.

2) 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 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.

3) The Hon'ble Supreme Court in the case of Central Bureau of Investigation V/s. Aryan Singh, dated 10<sup>th</sup> April, 2023 passed in *Criminal Appeal No.1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022)* Singh has held that, while deciding an Application under Section 482 of Cr.P.C., the High Court can not conduct a mini trial. That, 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.

3.1) In the case of Manik B. V/s. Kadapala Sreyes Reddy And Anr. dated 7<sup>th</sup> August, 2023 passed in *SLP (Crl) No. 2924 of 2023*, the Hon'ble

Supreme Court has held that, the Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all. It is further held that, it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the charge-sheet.

4) Despite pointing out aforesaid settled position of law to the learned counsel for Petitioner, wants this Court to conduct a mini trial to adjudicate his defence, in our jurisdiction under Article 226 of the Constitution of India, which is not permissible in law. Even though we heard learned counsel for Petitioner for more than ten minutes on the facts involved in the Petition, only to respect him and nothing more than it. We are quite conscious of the law enunciated by the Hon'ble Supreme Court in the afforested decisions. The arguments advanced across the bar itself amounts to conducting a mini trial, which is also not permissible under the law, in view of the aforementioned decisions of the Hon'ble Supreme Court. As noted earlier, the Petitioner is having alternate statutory remedy under the provisions of Cr.P.C., before the trial Court.

5) By reserving the said remedy, Petition is disposed off.

6) In view of disposal of Petition, Interim Application No. 3367 of 2023 does not survive and is also disposed off.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)