

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3704 OF 2022

1. Mahendra Shamsher Singh Sawant	]	
2. Shamsher Birbhan Singh	]	... Petitioners

V/s.

1. Vinisha Mahendra Sawant	]	
2. The State of Maharashtra	]	... Respondents

Ms.Mugdha Moghe i/b. India Law Alliance for Petitioners.

Mr.Advait Tamhankar for Respondent No.1.

Mrs.M.M. Deshmukh, A.P.P for Respondent No.2-State.

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

DATE : 21st June 2023.

P.C. :

1. Admittedly after completion of investigation of present crime police have submitted chargesheet.

Petitioners are thus having a substantive alternate remedy by way of filing an application for discharge, under the provisions of Criminal Procedure Code 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 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 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. 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 otious, by directly approaching this Court under Article 226 of the Constitution of India.

4. In view of the above and by reserving the remedy of filing application for discharge in the Trial Court, Petition is disposed off.

[SHIVKUMAR DIGE, J.]

[A.S. GADKARI, J.]

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