



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3518 OF 2023

IN

CRIMINAL WRIT PETITION NO. 658 OF 2017

Chandrawati Vasudev Acharya,
Age 39 years,
Indian Adult residing at
Rathodaali, Neral East,
Taluka Karjat,
Dist. Raigad.

.....Applicant

Vs.

- 1) The State Of Maharashtra
- 2) Savita Chandrakant Rathod,
Age 42 years.,
Rathod Ali, Post Neral,
Taluka Karjat, District Raigad

.....Respondents

Ms. Medha Jondhale a/w Adv. Anand Jondhale, Adv. Rajnandini Jondhale,
Adv. Harshvardhan Shinde and Adv. Aditya Gole i/by Jondhale & Co. for the
Applicant.

Ms. A.S. Pai, P.P. a/w Mrs. M.H. Mhatre APP, for the Respondent-State.
Mr. Ganesh Koli for the Respondent No.2.

CORAM : A. S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.
DATE : 3rd OCTOBER, 2023.

PC:-

- 1) By this Interim Application, the Applicant, Original Petitioner
has prayed for recall of the Order dated 29th August, 2023 passed in the
abovementioned Petition and for hearing the said Petition on merits.

2) Heard Ms. Jondhale, learned counsel for the Applicant at length, Ms. Pai, learned PP for the Respondent-State and Mr. Koli, learned Advocate for Respondent No.2.

3) Criminal Writ Petition No.658 of 2017 filed by the Petitioner was disposed off by this Court by an Order dated 29th August, 2023 on the ground that, the Petitioner is having substantive alternate remedy before the trial Court, under the provisions of Cr.PC.

4) Order dated 29th August, 2023 reads as under:-

“1) As the police have already submitted chargesheet, the Petitioner is having substantive alternate remedy to file an application for discharge under the provisions of Criminal Procedure Code (Cr.PC.).

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

3) All contentions of both the parties are kept open.”

4.1) In this premise, present Application is filed for the reliefs as noted earlier.

5) 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.*
- 6) According to us, availing a statutory remedy, of filing an application for discharge before the Trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioner 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 Petitioner 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.

7) The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. 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.P.C., 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 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.

7.1) In the case of *Manik B. V/s. Kadapala Sreyes Reddy And Anr. dated 7th 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.

8) Though the Hon'ble Supreme Court has in unequivocal terms enunciated the law relating to alternate remedy, the learned counsel for the Applicant wants this Court to test the defence of Applicant in the said probable trial in our extra-ordinary jurisdiction under Article 226 of the Constitution of India, which is not permissible in law. Pleadings in the Application and arguments advanced across the bar by the learned counsel for the Applicant clearly indicates that, the Applicant wants this Court to conduct a mini trial for adjudication of her innocence in these proceedings which is also not permissible in view of the aforestated decisions of the Hon'ble Supreme Court.

Even otherwise, present Application for recalling of the Order and hearing the Petition afresh is not maintainable under Section 362 of Cr.PC..

9) We are of the considered view that, there are no merits in the Application and is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)