

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5488 OF 2019

Prashant Vijay Mishra and others	Petitioners
versus	
The State of Maharashtra and another	Respondents

Mr.Sanjay PShinde, Advocate for Petitioners.

Mr.S.S.Hulke, APP for State.

Ms.Shraddha Singh i/by Seema Singh, Advocate for Respondent no.2.

**CORAM : A.S.GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 20th March 2023

PC :

1. By the present petition the Petitioners-accused in C.R No.21 of 2017 registered with Malbar Hill Police Station, Mumbai, have prayed that said C.R as well as charge sheet filed therein be quashed and set aside.

2. Admittedly as per pleadings of Petitioners investigation of said crime has culminated in to filing of CC.No.9/DV/2017 and is pending before Metropolitan Magistrate, 40th Court, Girgaon, Mumbai.

3. In view thereof, Petitioners have substantive alternate remedy by way of filing discharge application as contemplated under the provisions of Cr.PC. The Petitioners without availing such

substantive alternate remedy have directly approached this Court by invoking jurisdiction under Article 226 of Constitution of India.

4. 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 alternate 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 and others, reported in AIR-1964-SC-1419;
- (ii) A.Venkatasubbiah Naidu Vs. Chellappan and others, reported in (2000)7-SCC-695;
- (iii) Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, reported in (2010)8-SCC-329;
- (iv) Radhey Shyam and another Vs. Chhabi Nath and others, reported in (2015)5-SCC-423;
- (v) Genpact India Pvt.Ltd Vs. Deputy Commissioner of Income Tax and another, reported in (2019)-419-ITR-400 (SC);
- (vi) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others, reported in (2019)9-SCC-538.

5. In view thereof, present Petition is disposed off by reserving liberty of Petitioners to avail alternate remedy under the provisions of Cr.PC.

(PRAKASH D. NAIK, J.)

(A.S.GADKARI, J.)

MST