

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 258 of 2023**

Bashir Mohammed Hussain Memon @
Mubashir Mohammed Hussain Menon

... Petitioner

V/s.

State of Maharashtra and Ors.

... Respondents

Mr. Shafak A. Bakali for Petitioner.

Mr. Ajay Patil, APP for Respondent-State.

PSI-M. A. Inamdar, Wanawori Police Station present.

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

DATE : 8th JUNE, 2023.

PC. :

1. Present Petition under Article 226 and 227 of the Constitution of India is filed by the Petitioner for quashing of R.C.C No.66 of 2021 arising out of FIR No.563 of 2019 dated 23rd October 2019 registered with Wanwadi Police Station, Pune, under Sections 354, 341, 323, 504 and 506(I) of the Indian Penal Code, 1860.

2. It is admitted fact on record that, after completion of the investigation, police has submitted chargesheet. In view thereof, the Petitioner is having substantive alternate remedy by way of filing an application for discharge before the Trial Court.

3. It is a 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.*

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.

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 1973 otious, by directly approaching this Court under Article 226 of the Constitution of India.

5. 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.)