

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1640 OF 2023**

Partik Prakash Turde

.. Petitioner

V/s.

State of Maharashtra & Anr.

.. Respondents

Mr. Aditya Parmar i/by Sana Khan for Petitioner.

Mrs. M. M. Deshmukh, APP for Respondent No.1-State.

Ms. Shradhha Sawant, Appointed Advocate for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 13th JULY 2023.****P.C. :**

1. Present Petition has been filed for quashing of C.R.No. 318 of 2022 registered with Kalachowki Police Station, Mumbai, for the offences punishable under Sections 376, 354(d), 501, 509 of I.P.C. and under Sections 67 and 67(A) of I.T. Act, 2000.

2. It is an admitted fact on record that, after completion of investigation, Police have submitted charge-sheet in the Court of Metropolitan Magistrate, 15th Court, Shewree, Mumbai.

Petitioner is therefore having statutory alternate remedy under the provisions of Cr.P.C. before the trial Court.

3. It is the settled position of law and 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 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 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 & Cors., 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. Petitioners cannot be permitted to raise a spacious plea calling upon this Court to adjudicate their innocence

in a Petition under Article 226 of the Constitution of India. It is against the settled principles of law. At the same time, Petitioners cannot be permitted to make the statutory provisions of the Code of Criminal Procedure 1973 otiose, by directly approaching this Court under Article 226 of the Constitution of India.

5. In view of the above, by reserving the remedy of filing application for discharge under Section 227 of Cr.P.C. and/or to contest the said case, Petition is disposed off.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

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