



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

961 CRIMINAL WRIT PETITION NO. 916 OF 2024

CHNDRKANT SAKHARAM CHEDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. Narendra B. Patekar Advocate for Petitioner.
Mr. S.S. Dande, A.P.P. for Respondents.
...

CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 14th AUGUST, 2024

ORDER :

1. The petitioner by invoking the constitutional powers of this Court under Article 226 of the Constitution of India, prays as follows:-

“(A). By issuing writ of mandamus under Article 226 of the Constitution of India or any other appropriate writ, in like nature this Hon’ble Court may kindly direct the respondents No.1 to 8 that, they shall initiate Criminal action by filing F.I.R. after initiating detail enquiry against the delinquent sand mafiya for committing illegal excavation and transportation of sand from gut No.28 owned by petitioner and other land holders of village Chede Chandgaon, Taluka-Shevgaon, District-Ahmednagar.

(B) By issuing writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, in the like nature this Hon’ble Court may kindly direct the respondents No.1 to 8 to decide the representations dated 21.09.2023 and written communication received from Ld. Tahsildar on 03.11.2023 and 01.12.2023 in pursuance to lodged criminal complaint against delinquent sand mafiya annexed at page No.39 & 42 within stipulated period of time.”

2. Heard learned counsel for the petitioner. He submits that a panchnama in respect of petitioner's land was executed on 3rd October 2023 in presence of panchas, circle officer, talathi etc., wherein it was found that at four places there was excavation of the land. According to the petitioner, it is illegally made, which is in respect of *Murum*. Thereafter, upon the communications, Tahasildar by letter dated 3rd November 2023 informed him that *Murum* of 40.69 Brass was excavated, however, the panchnama does not reveal that who has done the excavation and therefore, he would be at liberty to file the First Information Report (for short "FIR").

3. Prior to that also, it appears that there was communication by the petitioner to the police station for the request of registration of the offence and at that time, names of the persons to be arrayed as accused have been given. It is then stated that no action has been taken by the police. Representation was made on 21st September 2023 for the registration of the offence and also on 7th December 2023 / 8th December 2023. Photographs have also been annexed and when actions are not being taken when such acts are rampant in the rural areas, the writ petition has been filed.

4. At the outset, it is to be noted that Tahsildar also could have lodged the FIR against unknown persons if at all the Tahsildar would have convinced that it is illegal excavation. But since in his communication, he says that since the excavation is in the land of the petitioner and it is not clear as to who has done that, he has stated that the petitioner would be at liberty. No doubt the representations have been made but the wordings those are used in the prayer clause (B) would amount to direction to the police officer to register the FIR, which cannot be undertaken in view of **Sakiri Vasu Vs. State of U.P. and Others.**, [(2008) 2 SCC 409], **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others.**, [(2016) 6 SCC 277]., **T.C. Thangaraj Vs. V. Engammal and Ors.**, [(2011) 12 SCC 328] and **M. Subramaniam and Others Vs. S. Janaki and Others**, [(2020) 16 SCC 728]. In view of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others (supra)** and **Sakiri Vasu Vs. State of U.P. and Others (supra)**, especially, the Hon'ble Supreme Court held that *"if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court Under Article 226 of the Constitution of India, but to approach the Magistrate concerned Under Section 156(3) Code of Criminal Procedure."*

Here, there is no explanation by the petitioner as to why he has not approached the concerned Magistrate under Section 156(3) of the Code of Criminal Procedure. The Hon'ble Supreme Court has therefore, held that, if such directions are to be given under Article 226 of the Constitution of India, then the High Courts will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions praying for registering the FIR or praying for a proper investigation and therefore, such practice is deprecated by the Hon'ble Supreme Court and therefore, not even directly or indirectly such prayer can be allowed. Therefore, the Writ Petitions deserves to be dismissed. However, we adopt the same course that was undertaken in **M. Subramaniam and Others Vs. S. Janaki and Others (supra)**, that the present petition should not be considered as a hurdle by the Magistrate if at all the application under Section 156(3) of the Code of Criminal Procedure is filed by the present petitioner.

5. The Petition, thus stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE