



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 CRIMINAL WRIT PETITION NO.1004 OF 2024

Raghunath Rambhau More
Age: 55 years, Occ.: Service,
R/o. Behind Jain Mandir, Saraf Bazar,
Amalner, Tal. Amalner, Dist. Jalgaon.

.. Petitioner

Versus

1. State of Maharashtra
Through, Deputy Superintendent of Police,
Amalner Division, Tal Amalner.
Dist. Jalgaon.
2. Police Station Amalner,
Dist. Jalgaon.

.. Respondents

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Mr. S. T. Mahajan, Advocate for the Petitioner.
Mr. A. V. Lavte, APP for Respondent No.1/State.

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**CORAM : SMT. VIBHA KANKANWADI &
R. W. JOSHI, JJ.**

DATE : 21 NOVEMBER 2024

ORDER :

. Present petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India for following reliefs :-

“A) The Writ petition may kindly be allowed.

B) By issuing writ of Mandamus or writ in the like nature that the respondent Police Officer of the

Police Station Amalner, may please be directed to registered FIR of cognizable offences against the Directors/ office bearers of the Pujya Sane Guruji Amalner Nagarpalika Varisht Karmachari Satkari Patpedhi Maryadit, Amalner, Dist Jalgaon.

C) Any other relief may please be granted to the petitioner to which it may be found entitled to under the law and in the end of justice.”

2. Heard learned Advocate for the petitioner and learned APP for respondent No.1.

3. After taking us through the complaint dated 06.08.2021, learned Advocate for the petitioner submits that some interested persons of Pathpedi are doing misappropriation in the purchase transaction of gift articles. When petitioner realized that there is some wrong and mischief has been played by the interested persons of Pathpedi, he had given application dated 19.10.2020 to the Pathpedi for seeking details of said transaction of purchase of gift articles. Thereafter, applied to Sub-Registrar, Co-operative Societies, Amalner on 03.12.2020 for seeking details of said transaction. Then in reply, the Secretary of said Pathpedi supplied written information that copper pot having weight 1.75 kg is purchased at rate of Rs.1400/- per pot and total 115 pots

are purchased from Chunilal Jain of Songir. After noticing this fraudulent transaction, the petitioner also applied to the Sub-Registrar, Co-operative Societies, Amalner, District Jalgaon for calling details from the said Patpedhi in respect of allocation of gift articles to the members. Accordingly, on 19.10.2020, Sub-Registrar, Co-operative Societies, Amalner, District Jalgaon issued letter to the Chairman of the said Pathpedi for calling details of said transaction of allocation of gift articles. On the basis of the application as well as the details supplied by the Chairman of the said Pathpedi, the Sub-Registrar, Co-operative Societies, Amalner, Dist. Jalgaon had come to the conclusion that there are irregularities, misappropriation of amount of Rs.1,10,488/- and fraud played by the concerned office bearers of said Pathpedi and issued such letter dated 10.02.2021 to the Chairman. Therefore, the Sub-Registrar, Co-operative Societies, Nashik Division, Nashik, reported the matter by his letter dated 10.02.2021 to Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik and seek permission to file police complaint against the office bearers/erring directors from said Pathpedi. In the meanwhile, after receiving letter dated 10.02.2021 by the Sub-Registrar, Co-operative Societies, Amalner, the Chairman,

Secretary and erring Directors and office bearers of said Pathpedi realised that their misappropriation of public fund of pathpedi has been caught by the petitioner and Sub-Registrar, Cooperative Societies, Amalner. Therefore, they had hatched conspiracy with the copper pot supplier and shown that the supplier had refunded the amount to the Pathpedi. This fact was reported by the Chairman and Secretary of said Pathpedi to the Sub-Registrar on 17.02.2021. The petitioner submits that considering the time killing factor and process by the Government Officials in taking criminal action against wrongdoer of Pathpedi, he had filed written complaint on 06.08.2021 to respondent No.2. Thereafter, respondent No.2 forwarded the said complaint to respondent No.1 for further action. Even after filing complaint, the police had not taken any action against erring directors of Pathpedi. Learned Advocate for the petitioner relies upon judgment of Hon'ble Supreme Court in case of **Lalita Kumari Vs. State of Uttar Pradesh and others, 2014 (2) SCC 1**. The learned Advocate for the petitioner vehemently submits that the complaint filed by the petitioner discloses cognizable offence and, therefore, it was mandatory for the police to record the First Information Report.

4. We are taking note of the decision in case of **Sakiri Vasu Vs. State of Uttar Pradesh and others, 2008 (2) SCC 409**, wherein it has been observed thus :-

25. *we have elaborated on the above matter because we often find that when someone has a grievance that the First Information Report has not been registered at a police station and/or an appropriate investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alterating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers and if that is of no avail, by approaching a Magistrate concerned under Section 156(3).*

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under*

Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

5. A decision in **Sakiri Vasu (supra)** was then relied in case of **T.C. Thangaraj vs. V. Engammal & others, 2011(12) SCC 328** and **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others, 2016(6) SCC 227**. In case of **Sudhir (supra)** it has been observed thus :-

“[2] This Court has held in Sakiri Vasu v. State of U.P., 2008 2 SCC 409 , 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) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which

includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu v. State of U.P., 2008 2 SCC 409 because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

[3] *We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”*

6. Further, all these decisions are referred in three Judge bench of Hon'ble Supreme Court in **M. Subramaniam and others vs. S. Janaki, 2020(16) SCC 728**. Especially, paragraph Nos.2, 3 and 4 from **Sudhir Tambe (supra)** were referred.

Important point to be noted is that in Three Judge bench decision in ***M. Subramaniam (supra)***, the order passed by Madurai bench of Madras High Court to register the case i.e. First Information Report on the basis of complaint was challenged. That order was set aside. Taking into consideration the decision in ***Sakiri Vasu (supra)***, ***Mohd. Yusuf vs. Smt. Afaq Jahan, 2016(1) SCC 627*** and ***Sudhir Tambe (supra)***, as aforesaid, the impugned order was set aside. Therefore, in this case, the Petitioner has the remedy to approach the Magistrate under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 and we adopt the same course as was adopted in case of ***M. Subramaniam (supra)*** and observe that this Court has not expressed any opinion on the merits of the complaint as to whether it is disclosing any criminal offence or not. However, this proceeding should not be taken as an impediment for the Petitioner to approach concerned Judicial Magistrate, if advised. Of course, the Magistrate is then guided by the provisions of law. With these observations, the Petition stands disposed of.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm