



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1411 OF 2024

Yuvraj s/o Baburao Sutar
Age.46 years, Occ: Artist
R/o: CTS No. 18095,
Behind Shivalik Apartment,
Kesarsinghpurao Kokanwadi,
Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra
- 2] Commissioner of Police,
Aurangabad City.

.. Respondents

...

Mr. N. S. Ghanakear, Advocate for petitioner.
Mr. N. R. Dayama, APP for Respondent Nos.1 and 2/State.

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

DATE : 06 DECEMBER 2024

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

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

“A) This criminal writ petition may kindly be allowed.

B) That, directions may kindly be given to the respondents to add section 143, 147, 148, 323, 324, 307, 326, 394, 395, 397, 448, 451, 452, 120-B of Indian Penal

Code and 4(25), 4(27) Arms Act in Crime No.97 of 2024 and oblige.

C) The directions may kindly be given to respondents to investigate properly.

D) Any other suitable relief be granted in favour of the petitioner.”

2. Heard learned Advocate for the Petitioner and learned APP for respondent Nos.1 and 2/State.

3. After taking us through the complaints dated 03.12.2023, 04.12.2023, 24.04.2024 and 25.04.2024, learned Advocate for the petitioner submits that on 03.06.2024 when the petitioner went for walking at about 8.30 a.m., one unknown woman along with 25 to 30 persons forcibly entered in the house of the petitioner and assaulted wife of the petitioner and his children and brought them outside the house. They also thrown the household articles of the petitioner outside the house and, at that time, petitioner’s wife called him and informed him about the same. Petitioner came to his house. Those persons assaulted the petitioner and his nephew with an intention to commit their murder with knife, cycle chain, fighter, wooden logs, table, chairs etc. In the said assault, one Siddharth Ratnaparkhe attempted to

attack with knife on the neck of the petitioner, however, petitioner put his hand and therefore, his left hand near wrist got severely injured and had stitches. Even one unknown person assaulted the nephew of the petitioner with fighter on his head behind his left ear and Abhishek Pagare assaulted him with knife on his back. Other 10 to 12 persons had assaulted with whatever weapons they were carrying as well as with fists, blows and kicks. As a result of which petitioner's nephew fell down. Accused persons also taken gold chain weighing 11.700 gms, two gold ear rings weighing 8 grams and cash of Rs.10,000/- from the petitioner forcibly. Thereafter, petitioner called police, however, police came there after one hour of the incident and they informed the petitioner to go to Vedant Nagar Police Station. Therefore, petitioner went there, on which he was advised to go to hospital, as the petitioner was bleeding and for that purpose medical memo was given to the petitioner. After treatment from Government Hospital, Aurangabad, petitioner went back to Vedant Nagar Police Station for lodging report and also brought CCTV footage of the incident showing brutal assault on him and his nephew. However, police authorities refused to take down the report in verbatim and have taken the report as per their whims

and registered the FIR bearing Crime No.97 of 2024 against the accused persons. The petitioner was threatened to sign the said FIR, otherwise police will register other sides report against the petitioner. The petitioner therefore submits that since beginning the conduct of the police authorities of Vedant Nagar Police Station was biased and illegal. He submits that the police authorities are helping accused persons and trying to save them. Being fed up with this behaviour of police authorities, the petitioner filed complaint with respondent No.2 on 12.06.2024. However, even respondent No.2 did not consider any of the contentions and has not taken any action. Hence, the present petition.

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 altering 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 complaints as to whether those complaints are 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