



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL WRIT PETITION NO. 1404 OF 2024

Dr. Datta Annasaheb PathrikarPetitioner

VERSUS

The State of Maharashtra & anotherRespondents

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Mr. S.T. Mahajan, Advocate for the Petitioner
Mr. N. R. Dayama, APP for the State.

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

DATE : 21st AUGUST, 2024.

PER COURT :

1. 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 Cidco Police Station Aurangabad, may please be directed to register FIR of cognizable offences against the Sau

Mehar Datta Pathrikar and Devesh Datta Patrikar
and their associates.

C) By issuing writ of Mandamus or writ in the like nature that the respondent Police Officer of CIDCO Police Station Aurangabad, may please be directed to freeze the accounts of Institute of Management, Badnapur, Dist. Jalna, Institute of Pharmacy and Arts, Science & Commerce College, Badnapur, which are in Bank of Maharashtra branch Badnapur, having A/c nos. I)60338844274 II) 60312514926, III)20252400726 respectively.

D) 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 complaints dated 26.10.2023 and 25.05.2024, learned Advocate for the Petitioner submits that the proposed accused persons, without taking in confidence the Chief Trustee and other Trustees, by preparing bogus documents and

resolution, changed the authorisation of signing authority for doing the banking transaction and handling the transaction of trust. When Petitioner came to know about such illegal activities, immediately a communication was made to the bank. However, inspite of such communication the bank officials permitted the proposed accused to do banking transaction and to operate the account of the trust. Thereafter, on 26.10.2023, Petitioner filed a complaint with Police Inspector, Cidco Police station, Chhatrapati Sambhajinagar. Though the Petitioner had approached the police station for registration of the offence, it has not been registered. So he had made a complaint with the Superintendent of Police. 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?

6. 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) has 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.

7. 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 3 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. What 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.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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