



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

938 CRIMINAL WRIT PETITION NO. 1402 OF 2024

Anand Kashiram Sapkale

....Petitioner

VERSUS

The State of Maharashtra & others

.....Respondents

.....

Mr. S. A. Sapkale, Advocate for the Petitioner.

Mr. S. A. Gaikwad, 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 a writ of mandamus, or any other writ, or order or directions in the like nature, the respondent no. 1 be kindly directed to register the First Information Report in cognizable crimes/offences against the

accused persons as stated in the complaint dated 08/07/2024 as expeditiously as possible within 3 days.

c) Any other equitable and suitable relief may please be granted in favour of the petitioner, to which he is entitled in interest of justice and facts and circumstances of the case.

2. Heard learned Advocate for the Petitioner and learned APP for Respondent No. 1.

3. After taking us through the complaint dated 08.07.2024, learned Advocate for the Petitioner submits that the proposed accused persons have prepared false documents. Infact, the Petitioner never entered into those documents and those documents were produced before Consumer Forum and stated to be genuine documents. 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 Sindhu Janak Nagargoje vs. State of Maharashtra and others, **2023 LiveLaw (SC) 639**, arising out of SLP (Cri.) No. 5883/2020. That appeal was directed against the order passed by

this Court on 05.10.2020 in Criminal Writ Petition No. 817/2020 whereby this Court had dismissed the Writ Petition filed by the appellant to register the offence as per the complaint submitted by the appellant. Reliance was placed on 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 on 08.07.2024 discloses cognizable offence and therefore, it was mandatory for the police to record the First Information Report. He places reliance on Section 175(1) of Bharatiya Nagarik Suraksha Sanhita, 2023.

4. At the outset, it is to be noted that as per the statement of Petitioner, since those documents were produced before the Consumer Forum then it is for the Petitioner to explain as to why application was not placed before the concerned forum for registration of offence. Be that it may. So far as the complaint dated 08.07.2024 is concerned, it appears that it was filed with the Superintendent of Police Jalgaon as well with to the Police Inspector, Ramanand Nagar Police Station. The subject of the complaint is regarding complaint of conspiracy, forgery, abetment and other offences committed in agreement dated 23.12.2019 submitted by the

accused persons. Therefore, whether such provisions would be applicable would be a question. Still we find that Section 175(3) empowers a Magistrate that after considering the application supported by an affidavit made under sub-section 4 of Section 173, and after making such enquiry as he thinks necessary and submission made in this regard by the Police Officer, order such an investigation as above mentioned. We consider that this power given to a Magistrate is equivalent to Section 156(3) of Code of Criminal Procedure. Certainly, even as per Lalita Kumari's case (supra), it was not mandatory that when a complaint discloses cognizable offence then the police are duty bound to register the First Information Report.

5. 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?

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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