



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.896 OF 2024

Nagraj Janardan Patil,
Age-75, Occu:Ed-Serviceman,
R/o-182, Bhikamchand Jain Nagar,
Jalgaon

...PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Home Secretary,
Mantralaya, Mumbai,
- 2) Director General of Police,
Police Head Quarter, Kulaba,
Mumbai,
- 3) Superintendent of Police,
Jalgaon,
- 4) S.D.P.O., Jalgaon,
- 5) P.I., City Police Station,
Jalgaon

...RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO.1395 OF 2024

Nagraj Janardan Patil,
Age-75, Occu:Ed-Serviceman,
R/o-182, Bhikamchand Jain Nagar,
Jalgaon

...PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Home Secretary,
Mantralaya, Mumbai,
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Police Head Quarter, Kulaba,
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- 3) Superintendent of Police,
Jalgaon,
- 4) S.D.P.O., Jalgaon,
- 5) P.I., City Police Station,
Jalgaon

...RESPONDENTS

...
Mr. N.J. Patil, Party-in-person for Petitioner in both
Petitions.
Ms. R.P. Gour, A.P.P. for Respondents in both Petitions.
...

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

DATE OF RESERVING ORDER : 30th SEPTEMBER 2024

DATE OF PRONOUNCING ORDER : 21st OCTOBER 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Both these Petitions have been filed for following reliefs:-

"b) By an appropriate order direct respondent no.5 i.e. I.P., City Police Station, Jalgaon or Respondent No.3 i.e. S.P.

Jalgaon to register FIR against accuse who are involved in criminal activities as enumerated in criminal complaint dated 14/15 Jan. 2024,

c) By an appropriate order direct P.I. City Police Station, Jalgaon or S.P. Jalgaon to submit quarterly progress report of Investigation before this Hon'ble Court,

d) By an appropriate order direct DGP to initiate legal action against respondent No.3, 4 and 5 for their illegal and criminal act of protecting accused of criminal complaint by not registering FIR."

e) Any other equitable relief may please be granted in favour of petitioner."

2. The petitioner is Ex-serviceman, who resigned from the post of P.S.I. In Indian Air-force on 8th September 1988 and joined Jalgaon Zilha Sahakari Dudh Utpadak Sangh, Jalgaon as Chief Security Officer from 9th September 1988. His services have been terminated on 18th December 1999. He has been granted permission to conduct the matter in person by the Committee constituted as per Notification dated 9th September 2015 under the rules framed by this Court.

3. Heard the petitioner in person and learned APP for the State.

4. It has been tried to be submitted by the petitioner that he has filed Criminal M.A. No.460 of 2013 before the learned Chief Judicial Magistrate, Jalgaon against 115 accused which include then Ministers, Secretaries, Registrars, Auditors of Dairy and office bearers of National Dairy Development Board. Learned Chief Judicial Magistrate (C.J.M.), Jalgaon had directed the City Police Station, Jalgaon by order dated 3rd October 2013 to register the First Information Report (for short "the FIR") and investigate the matter. Though the Police Station registered the FIR vide Crime No.182 of 2013; the investigation was not carried out. According to the petitioner, the FIR is not based on the criminal complaint submitted by him. The petitioner also gives list of about seven cases which he has filed. Out of which five are the regular criminal cases before the concerned Magistrate, one is criminal miscellaneous application, which appears to be for direction of investigation under Section 156(3) of the Code of Criminal Procedure and the last is public interest litigation for illegal selection and recruitment in the Sangh in 2021. He has then given details of those cases and then submits that he has filed criminal complaint on 14/15th January 2024 with respondent

Nos.3 and 5, however, they have not taken cognizance. Hence the present Petitions for the aforesaid reliefs.

5. At the outset, we would like to say that both the Petitions appear to be for the same reliefs i.e. based on criminal complaint which is stated to be filed by the petitioner on 14/15th January 2024. When he has filed the said complaint with Police Inspector as well as then Superintendent of Police, Jalgaon and according to him, they have not taken cognizance of his complaint, then his remedy is under Section 156(3) of the Code of Criminal Procedure. Such Writ Petitions under Article 226 of the Constitution of India cannot be entertained. Reliance can be placed on the decisions in *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] and *T.C. Thangaraj Vs. V. Engammal and Others*, [(2011) 12 SCC 328], which have been then referred in *M. Subramaniam and Others Vs. S. Janaki and Others*, [(2020) 16 SCC 728]. In *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others* (supra) it has been observed that:-

"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 concerned Magistrate Under Section 156(3), Code of Criminal Procedure, 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. In **Sakiri Vasu Vs. State of U.P. and Others** (*supra*), it has been clearly observed 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."

7. We are therefore, of the opinion that the petitioner should approach the learned Magistrate under Section 156(3) of the Code of Criminal Procedure. We are taking the same recourse as it was taken in **M. Subramaniam and Ors. Vs. S. Janaki and Others** (*supra*). We dispose of both the Writ Petitions by giving liberty to the petitioner to take appropriate recourse as aforesaid. We clarify that we have not expressed anything on

merits and if such recourse is taken by the petitioner before the concerned Magistrate, then the learned Magistrate to decide such application on its own merits.

8. In view of the above observations, both the Writ Petitions stand disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCT24