



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

905 CRIMINAL WRIT PETITION NO. 1514 OF 2024

Kalpana Janardhan Patil @ Kalpana Pralhad Patil

VERSUS

The State Of Maharashtra And Others

...

Advocate for the Petitioner : Mr. R.C. Bramhankar

APP for Respondents: Mr. S A Gaikwad

...

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

Dated : September 13, 2024

PER COURT :-

1. Heard learned advocate for the petitioner.
2. Though, the petitioner contends that accused have committed offence under Bharatiya Nyaya Sanhita, 2023, but taking into consideration written complaint, which was filed by the petitioner, it appears that alleged date of offence is in June, 2024 i.e. before coming into force Bharatiya Nyaya Sanhita, 2023. Under such circumstances, the offence if it is transpiring would be under the Indian Penal Code.
3. It appears that written complaint was initially filed with the P.I. of Police Station, Nimbhora, Tq. Raver, District Jalgaon and on 22.6.2024 it appears that the complaint was also given to Superintendent of Police, Jalgaon. Now, the present petition has been filed for giving directions to respondent nos.2 and 3 to register the offence, to give police protection to the petitioner, to direct respondent nos.1 and 2 to take preventive

action against the accused persons and to direct the action to be taken against concerned police officer who have not taken cognizance of the complaint of the petitioner though prima facie offence is shown cognizable.

4. Here we would rely the decision in case of **Sakiri Vasu Versus State of Uttar Pradesh and others** reported in (2008) 2 Supreme Court Cases 409, **T.C. Thangaraj Versus. V. Engammal and others** reported in (2011) 12 Supreme Court Cases 328, **M. Subramaniam and another Vs. S.Janaki and another** reported in (2020) 16 Supreme Court Cases 728 and **Sudhir Bhaskarrao Tambe Vs. Hemant Yeshwant Dhage and others** reported in (2016) 6 Supreme Court Cases 277. Out of that, in **Sakiri Vasu Versus State of Uttar Pradesh and others**, the Hon'ble Supreme Court held 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) Cr.P.C. 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. This observation is made in **Sudhir Tambe** and it is further opined 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 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. Therefore, the petitioner has alternate efficacious remedy and in view of the observations, in fact, has only one remedy that is to approach the concerned Magistrate under section 156 (3) of the Criminal Procedure Code.

5. Upon this legal position told to the learned advocate for the petitioner, he upon instructions, submits that the petitioner would like to approach the Magistrate and therefore, with liberty the petition stands withdrawn and **disposed of**.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

...

aaa-