



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1880 OF 2024

Balaji s/o Arjun Rajhans
Age: 35 years, Occu.: Labour,
R/o. Kasba Area Water Tank, Kaij,
Road, Dharur, Tq. Dharur,
District Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through it's Secretary
Home Minister, Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Beed, Tq. And Dist. Beed.
3. The Police Inspector,
Police Station Dharur
Tq. Dharur, Dist. Beed.
4. Balaji s/o Prakashrao Shingare
Age: 38 years, Occu.: Agri. & Labour,
R/o. Near Water Tank, Kasba Area,
Dharur, Tq. Dharur,
District Beed.
5. Randavani w/o Prakashrao Shingare
Age: 56 years, Occu.: Household,
R/o. Near Water Tank, Kasba Area,
Dharur, Tq. Dharur,
District Beed.

.. Respondents

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Mr. V. S. Kodale and Mr. M. S. Adate, Advocate for petitioner.
Mr. V. K. Kotecha, APP for Respondent Nos.1 to 3/State.

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

DATE : 29 NOVEMBER 2024

ORDER :

. 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) By issuing writ of mandamus or any other appropriate writ, order or directions to respondents police authorities be directed to take the immediate action against respondent Nos.4 and 5 by registering FIR as per complaint filed by the petitioner and his wife dated 21.08.2024 and 29.08.2024 and after registering FIR take necessary action against accused persons.

C) Pending hearing and final disposal of this criminal writ petition, the police authorities be directed to take necessary action against accused person in the above said crime and make the inquiry as per the provisions of law.

D) Any other appropriate relief to which the petitioner is found entitled be granted in favour of present petitioner.”

2. Heard learned Advocate for the Petitioner and learned APP for respondent Nos.1 to 3/State.

3. Learned Advocate for the petitioner submits that the petitioner had filed complaints with respondent No.2 on 21.08.2021 and 29.08.2024, however, respondent authorities had not registered the FIR. He submits that in fact already FIR vide Crime No.39 of 2024 was registered against respondent No.4 for the offences punishable under Sections 376, 452, 323, 504, 506 of Indian Penal Code, however, respondent No.4 was released on bail on 06.03.2024. Thereafter, respondent No.4 along with his mother entered in the house of petitioner and threatened him as to why his wife has not settled the matter in respect of Crime No.39 of 2024. Thereafter, they beaten petitioner and his wife and locked the wife of the petitioner in the house. Thereafter, they took the petitioner to their house, put the deadly weapon near the petitioner and went to respondent No.3 and alleged that the petitioner had entered their house and tried to kill them and respondent No.3 then registered the offence against the petitioner. Therefore, the petitioner has filed aforesaid complaints with respondent No.2. However, respondent authorities are not taking any action against respondent Nos.4 and 5. As the police authorities are not taking any action against respondent Nos.4 and 5, they are giving threats to settle the matter, which was

registered against them, therefore, there is danger to the life of the petitioner and his wife. He relied on the 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?

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