



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1927 OF 2024

Dhondiram s/o Savalaram Suryavanshi
Aged: 70 years, Occu.: Agril.,
R/o. Laxminagar, near Om Plaza,
Latur, Tq. And Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
to the Government of Maharashtra
in Revenue Department, Mantralaya,
Fort, Mumbai-32.
2. The District Collector,
Latur, Tq. And Dist. Latur.
3. The Tehsildar,
Tehsil Officer, Latur,
Tq. And Dist. Latur.
4. The Police Inspector,
Gramin Police Station,
Latur, Tq. And Dist. Latur.
5. The Superintendent of Police,
Latur, Tq. And Dist. Latur.
6. Gunvan Kisan Vaghmare
Aged; 35 years, Occu.: Agril,
R/o. Malevati, Tq. And Dist. Latur.

.. Respondents

...
Mr. A. N. Patale, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP Respondent Nos.1 to 5/State.
...

**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) Respondent Nos.3 and 4 may please be directed to take appropriate action against respondent No.6 as per the representation made by the petitioner dated 30.04.2024 to Superintendent of Police and letter to Tehsildar dated 17.05.2024 and issuing writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus.

C) To direct respondent No.6 not to interrupt in peaceful possession of petitioner.

D) Any other relief deemed fit may please be granted in favour of the petitioner.”

2. Heard learned Advocate for the Petitioner and learned APP for respondent Nos.1 to 5/State.

3. Learned Advocate for the petitioner submits that the petitioner is the owner and possessor of land admeasuring 1 H, 11 R in Gut No.50 of village Malvati, Taluka and District Latur. The dispute arises due to respondent No.6, who is owner and

possessor of land in Gut No.51. Respondent No.6 is taking advantage of the fact that the petitioner is residing at Latur. He has diverted the flow of canal water in the land of the petitioner, by way of putting material in it. Therefore, the petitioner filed complaint under Section 5 of the Mamlatdar Courts Act before the learned Tehsildar, Latur. The petitioner further submits that in the year 1975 his father had also made complaint against the father of respondent No.6 before the Police Inspector Gramin on 31.07.1975. He further submits that after filing of application under Mamlatdar Courts Act by the petitioner, notice was issued by office. After receiving notice, respondent No.6 appeared and filed his reply. Thereafter, after hearing both the sides, learned Tehsildar directed to measure the land of petitioner and respondent No.6 and directed to prepare panchanama. As per the directions of Tehsildar, land record officer issued notice to petitioner and respondent No.6. The survey officer prepared panchanama. Petitioner further submits that the learned Tehsildar vide letter dated 22.02.2022 directed to carry out spot inspection and perused all the documents and map submitted by petitioner and respondent No.6 and directed Deputy Superintendent of Land Record, Latur to fix the four boundaries

of disputed land. It is submitted that after issuance of letter by learned Tehsildar, the Deputy Superintendent of Land Record issued notice on 15.03.2022 to the petitioner. After receiving notice, petitioner submitted all the previous maps issued by the land record department. Being aggrieved by the notice issued by learned Tehsildar, petitioner filed application dated 23.03.2022 that the dispute is regarding canal running from Gut No.51 and not about the land boundaries dispute. He further submits that after panchanama made by Deputy Superintendent of Land Record, spot inspection made by learned Tehsildar and old map submitted by petitioner, it is clear that the canal is running from the land of respondent No.6 i.e. Gut No.51. After knowing this aspect, respondent No.6 trying to block the canal putting hurdle in the flow of water, when petitioner went to ask about it , at that time, respondent No.6 assaulted the petitioner with wooden stick and kicks and blows. Therefore, the petitioner went to lodge complaint to Police Station Gramin Latur. The police authorities advised him to take medical treatment first and thereafter to lodge the complaint. After completion of medical treatment, petitioner came to lodge complaint, the police inspector lodged non cognizable offence against respondent No.6. Though there

are life threatening injuries, but the police authorities have not registered cognizable offence. Even respondent No.6, who is 35 years old alleged that petitioner, who is aged 75 years, assaulted him and lodged complaint against the petitioner and the police authorities without verifying any aspect, lodged complaint against the petitioner also. Hence, after physical assault by respondent No.6, the petitioner made several representations to the learned Tehsildar and the Police Inspector Gramin, Latur to take action against respondent No.6 and protect the petitioner, but as on today no action was taken by them.

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 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?*

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 complaint as to whether that complaint 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.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm