

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1329 OF 2016**

Akash Dinesh Singh Thakur & Anr.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr.Subhash Jha a/w. Mr.Ritesh Kesarwani & Ms.Priti Singh i/b. Law Global Advocates for Petitioners.

Mr.J.P. Yagnik, A.P.P. for Respondents-State.

P.S.I. Mr.Shankar L. Sarkte, M.R.A. Marg Police Station is present.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 21st February 2024.

P.C. :

1) By the present Petition under Article 226 of the Constitution of India read with Section 482 of Cr.P.C., the Petitioners have prayed for, quashing of C.R. No.298 of 2013 registered with M.R.A. Marg Police Station, Mumbai under Section 420 read with Section 34 of the Indian Penal Code and also all the other proceedings arising therefrom including C.C.No.509/2013 pending in the Court of 38th Metropolitan Magistrate Court, Ballard Pier, Mumbai; for holding Departmental Inquiry against the Investigating Officer of the said C.R. No.298 of 2013 Shri. Yogesh Deshmukh as well as other police personnel who allegedly meted third degree treatment to the Petitioners and; for compensation to each of the Petitioners for their

alleged illegal judicial custody for 6 days during the investigation of the said crime.

2) Record clearly indicates and even as per the pleadings of the Petitioners, the investigation of the present crime is completed and the police have filed chareg-sheet. Learned APP on instructions from P.S.I. Shri. Shankar L. Sarkte, attached to M.R.A. Marg Police Station, Mumbai, submitted that, after completion of investigation of present crime, the police have filed charge-sheet in the 38th Metropolitan Magistrate Court, Ballard Pier, Mumbai on 21st March, 2016 and the said case is numbered as C.C. No.36/PW/2016.

2.1) In view thereof, it appears that, the case number mentioned in prayer clause (a) as C.C. No.509/2013 is incorrect.

3) As the police have already filed charge-sheet, the Petitioners are having substantive alternate statutory remedy under the provisions of Cr.PC. before the trial Court.

In view thereof, prayer clause (a) for quashing of C.R. No.298 of 2013 registered with M.R.A. Marg Police Station, Mumbai and/or further proceedings therefrom including the aforesaid case, does not survive.

4) As far as prayer clause (b) i.e. Departmental Inquiry to be conducted against the Investigating Officer of the present crime i.e. Shri. Yogesh Deshmukh and other police personnel is concerned, the Petitioners are having alternate statutory remedy before the Maharashtra State Police

Grievance Redressal Committee, constituted under Section 22(p) of the Mumbai Police Act, 1951.

5) As far as awarding compensation to the Petitioners for the alleged illegal judicial custody is concerned, the said prayer is intertwined and a consequential relief of prayer clause (b) and it depends upon the decision of the Maharashtra State Police Grievance Redressal Committee if the Petitioners files complaint before it, subject to the law of limitation as may be applicable therein.

6) It is the settled position of law and as has been decided in catena of decisions by the Hon'ble Supreme Court that, ordinarily the Court will not entertain the Petition under Article 226/227 of the Constitution of India, where the Petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is well recognized principle which gained judicial recognition that, the High Court should direct party to avail himself of such remedies, one or the other before he resorts to the constitutional remedy.

6.1) Reliance is placed on the following decisions :

- i) *Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri & Ors., reported in AIR 1964 SC 1419.*
- ii) *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors., reported in (2000) 7 SCC 695.*

- iii) *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329.*
- iv) *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors., reported in (2015) 5 SCC 423.*
- v) *Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr., reported in (2019) 419 ITR 440 (SC).*
- vi) *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors., reported in (2019) 9 SCC 538.*
- vii) *Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., reported in 2021 SCC OnLine SC 801.*

7) Mr. Jha, learned counsel for Petitioners submitted that, filing of application for discharge or contesting the said case before the trial Court and/or to file an Application before the Maharashtra State Police Grievance Redressal Committee is not an efficacious alternate remedy and therefore the Petitioners may not be relegated to avail the same before the trial Court and/or before the Maharashtra State Police Grievance Redressal Committee.

8) According to us, filing an application for discharge before the trial Court and/or to file an Application before the Maharashtra State Police Grievance Redressal Committee is not an onerous remedy and in fact an equally efficacious remedy. The Petitioners cannot be permitted to raise a specious plea calling upon this Court to adjudicate his innocence in a Petition under Article 226 of the Constitution of India. It is against the settled principles of law. At the same time, the Petitioners cannot be permitted to

make the statutory provisions of the Code of Criminal Procedure otious, by directly approaching this Court under Article 226 of the Constitution of India.

9) In view thereof, by reserving the alternate remedies in favour of the Petitioners, Petition is disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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2024.03.19
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