

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1050 OF 2023**

Mr. Ashishkumar Samal & Anr.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Raghava M. a/w. Anvita Ail for Petitioners.

Mr. Anand Shalgaonkar, A.P.P. for Respondent No.1-State.

Mr. A.V. Konde Deshmukh for Respondent No.2.

PSI S.B. Kadam, attached to Sangvi Police Station, Pimpri Chinchwad, present.

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

DATE : 8th May 2024.

P.C. :

1) Petition is filed under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code (Cr.P.C.) by the Petitioners, for quashing of F.I.R. No. 353 of 2022 registered with Sangvi Police Station, Pimpri-Chinchwad, Pune for the offence punishable under Sections 498A, 323, 504 read with 34 of the Indian Penal Code (I.P.C.) and consequent Chargesheet filed thereof dated 18th January 2023 and further proceedings arising therefrom.

1.1) It is an admitted fact on record that, after completion of investigation of said crime the Investigating Officer has filed Chargesheet.

2) As the police have already submitted Chargesheet, the Petitioners are having substantive alternate statutory remedy under the provisions of the Criminal Procedure Code before the trial Court.

3) 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.

3.1) 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. Chhabhi 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.

4) In view thereof, learned counsel for the Petitioners seeks leave to withdraw Petition with liberty to avail alternate statutory remedy under the provisions of the Criminal Procedure Code before the trial Court.

Leave and liberty granted.

5) Disposed off as withdrawn with aforesaid liberty.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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CHITTEWAN

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