

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3122 OF 2024**

1. Mr. Harshbahadur Jaskaransingh Thakur]
2. Mr. Amit Harshbahadur Thakur] ... Petitioners

V/s.

1. The State of Maharashtra]
2. Mrs. Indu Santosh Thakur]
3. Mr. Shrikant Ashok Koli] ... Respondent

Mr. Amit H. Thakur, Petitioner No.2 in-person.

Mr. Vinod Chate, A.P.P. for Respondent No.1-State.

Mr. Siddharth G. Gaikwad, Police Naik (No.964), Vangaon Police Station,
District Palghar, present.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**

DATE : 22nd July 2024.

P.C. :

1) By the present Petition under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code (Cr.P.C.), the Petitioners have prayed for quashing and setting aside the F.I.R. No. 0092 of 2022 dated 2nd July 2022 registered with Vangaon Police Station, District Palghar.

2) Mr. Chate, learned A.P.P. on instructions from Mr. Siddharth G. Gaikwad, Police Naik (No.964), attached to Vangaon Police Station, District Palghar submitted that, after completion of investigation of present crime,

the police have filed chargesheet on 29th March 2023, in the Court of 2nd Judicial Magistrate First Class, Dahanu, District Palghar and the same is numbered as R.C.C. No. 62 of 2023.

3) The Petitioner No.2 Mr. Amit H. Thakur appeared in person.

3.1) At the outset, when we informed the Petitioner No.2 that, in view of filing of chargesheet by the police, he is having alternate remedy available under the provisions of Cr.P.C., he told us that, he will never go before the lower Court and will carry this Order to the Hon'ble Supreme Court. He told us in Marathi that, “आम्ही काय वेडे आहोत काय येथे यायला” i.e. Am I an idiot to come here (to file a Petition in the Court).

3.2) The Petitioner No.2 submitted that, it is his fundamental right to file such Petition and the principle of alternate remedy is not applicable to him. He vociferously submitted that, this Court ‘should’ and ‘must’ test the merits of his Petition without relegating him to avail alternate remedy. He submitted that, the perception of this Court regarding availability of alternate remedy is incorrect, rather wrong.

3.3) Mr. Thakur, Petitioner No.2, was not amenable to any suggestion made by the Court. He persisted and insisted this Court must exercise its jurisdiction under Article 226 of the Constitution of India and under Section 482 of Criminal Procedure Code to grant him relief. He infact continued his diatribe relentlessly and avoided to answer the basic questions put to him, i.e. the availability of alternate remedy before the trial Court.

3.4) Since Petitioner No.2 is appearing in person, we are inclined to exercise the discretion to be lenient and magnanimous. Hence we leave the matter here, despite the conduct of the Petitioner as noted above.

4) It is the settled position of law and as has been decided in catena of decisions by the Hon'ble Supreme Court, ordinarily the Court will not entertain the Petition under Article 226 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.

4.1) 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.

5) According to us, filing an application for discharge before the trial Court 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 Petitioner 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.

6) In view of the above and by reserving the alternate remedy under the provisions of Cr.PC. before the trial Court, in favour of Petitioners, Petition is disposed off.

(DR. NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

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