

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2431 OF 2024**

Jitendra Pandey

...Petitioner

Vs.

The State of Maharashtra & Anr.

...Respondents

Mr. Brijesh Pathak for the Petitioner.

Smt. M. H. Mhatre, APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.
DATE : 18th JUNE 2024**

P.C.:-

1) Present Petition under Article 226 of the Constitution of India, is for quashing of C. R. No. 294 of 2023 dated 6th October 2023 registered with Naupada Police Station, Thane for the offences punishable under Sections 420, 409, 467, 468, 120-B read with 34 of the Indian Penal Code, 1860 and Sections 66(C) & 66(D) of the Information Technology Act, 2000.

2) It is an admitted fact on record that, after completion of investigation of the present crime, Police have filed the charge-sheet.

2.1) In view therefore, the Petitioner is having substantive alternate statutory remedy under the provisions of Criminal Procedure Code, 1973, by way of filing an Application for discharge before the trial Court.

3) It is the settled position of law and as has been decided in a catena of decisions by the Hon'ble Supreme Court that, ordinarily

the Court will not entertain a Petition under Article 226/227 of the Constitution of India, where the Petitioner has an alternate 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 a well-recognized principle which gained judicial recognition that, the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a 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 om (2000)7 SCC 695.*
- iii) *Shalini Shyam Shetty & Anr. Vs. Rejendra 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 Private Limited Vs. State of Bihar & Ors. reported in 2021 SCC OnLine SC 801.*

4) According to us, filing of an Application for discharge before the Trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioner 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 Criminal Procedure Code, 1973 otious, by directly approaching this Court under Article 226 of the Constitution of India.

5) In view of the above and by reserving the remedy of filing Application for discharge before the Trial Court, the Petition is disposed off.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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