



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.159 OF 2025

1. Damantibai @ Damutibai w/o Uttam Gaikawad,
Age: 58 years, Occu.: Agri.,
R/o. Satkund Tanda, Tq. Kannad,
Dist. Aurangabad.
2. Nirmalabai w/o Namdev Pawar
Age: 68 years, Occu.: Household & Agri.,
R/o. Gajgaon, Tq. Gangapur,
Dist. Aurangabad.

Petitioner Nos.1 and 2 Through GPA
Savita w/o Devidas Gaikawad,
Age: 37 years, Occu.: Agri. and Labour,
R/o. Sitanaik Tanda, Tq. Kannad,
Dist. Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Police (Rural),
Aurangabad, Tq. And Dist. Aurangabad.
3. The Police Inspector,
Kannad Police Station (Rural),
Tq. Kannad, Dist. Aurangabad.

.. Respondents

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Mr. Y. D. Kale, Advocate for the petitioners.
Mr. V. K. Kotecha, APP for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 18 FEBRUARY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. The present petition has been filed for the following relief :-

“B) Kindly issue writ of mandamus or any other Writ or direction in the like nature, thereby kindly direct the respondent authority to register the crime as per the written complaint at Exhibit-‘D’ and ‘E’ made by the petitioners against the responsible persons (accused).”

2. Heard learned Advocate for the petitioners. Learned Advocate for the petitioners submits that the petitioners are the member of Scheduled Tribe community. Petitioners are the owner and possessor of the lands bearing Gut No.99 admeasuring 22 R, Gut No.64 admeasuring 8 H 74 R, Gut No.119 admeasuring 5 H 8 R situated at village Sitanik Tanda, Taluka Kannad, District Aurangabad. It is further submitted that the accused persons are continuously disturbing the possession of the petitioners on the count that some of the accused persons have purchased land Gut No.64 from one Raybhan Pitra More in the year 03.02.1976. Petitioner No.1 has made complaint on 30.08.2024 to the Tahsildar, Kannad and Kannad Rural Police Station, however, they did not took any steps regarding the complaint of petitioner No.1. Therefore, the petitioners have filed Regular Civil Suit

No.353 of 2024 against the responsible persons (accused persons) before the learned Civil Judge Junior Division, Kannad for perpetual injunction and the declaration of sale deed dated 01.06.1975 is not binding on petitioners. The said suit is pending for consideration till today. He further submits that the learned Sub Divisional Officer, Kannad by order dated 26.08.2024 has set aside the Mutation Entry Nos.1088 and 207 of Gut No.64 of the petitioners. The petitioners challenged the said order by filing Appeal No.109 of 2024 before the Collector, Aurangabad. He further submits that though the petitioners have filed R.C.S. No.353 of 2024 and Appeal No.109 of 2024, still the accused persons have not stopped their illegal activities. On 23.11.2024 at midnight the accused persons have stolen the Maze crop from the agricultural field of the petitioners. The petitioners went to lodge report with respondent No.3 Kannad Police Station, but respondent No.3 has not taken the complaint. Therefore, the petitioners have given written complaint to respondent No.2. After receiving the complaint, respondent No.2 has directed respondent No.3 to take appropriate action against the accused persons, but respondent No.3 has not registered any complaint against the accused persons, nor made any inquiry regarding the

complaint. Taking advantage of this fact, on 11.01.2025 again the accused persons have stolen the pigeon pea (Toor) crop of the petitioners. Upon inquiry with the accused persons, they abused the petitioners on the cast and threatened them. Thereafter petitioners have gone to lodge complaint with respondent No.3, but again respondent No.3 has not registered the complaint against accused persons. Therefore, the petitioners have again made written complaint on 15.01.2025 with respondent No.2. Being aggrieved by the inaction on the part of respondents, the petitioner has filed present writ petition.

3. Here, when the petitioner seeks registration of the FIR and the investigation thereof, then we are guided by the decisions in ***Sakiri Vasu Vs. State of U.P. and Ors., [(2008) 2 SCC 409]***, ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Ors., [(2016) 6 SCC 277]*** and ***T.C. Thangaraj Vs. V. Engammal and Ors., [(2011) 12 SCC 328]***, which have been then referred in ***M. Subramaniam and Ors. Vs. S. Janaki and Ors., [(2020) 16 SCC 728]***, wherein the Hon'ble Supreme Court has held that the petitioner/complainant will have to approach Magistrate under Section 156(3) of the Code of Criminal Procedure and the High Courts should not entertain such petitions under Section 482 of

the Code of Criminal Procedure or under Article 226 of the Constitution of India.

4. In view of the said legal position, the writ petition stands disposed of with liberty to the petitioner to approach the Magistrate as provided under the law.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm