



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.247 OF 2021

- 1) Ganesh Balasaheb Kale,
Age-35 years, Occu:Agri.,
R/o-Aalvani, Tq-Parner,
Dist-Ahmednagar,
- 2) Dattatraya Baburao Pagire,
Age-48 years, Occu:Agri.,
R/o-Jamgaon, Tq-Parner,
Dist-Ahmednagar,
- 3) Manisha Sahiba Rohokale,
Age-45 years, Occu:Household,
R/o-Aalvani, Tq-Parner,
Dist-Ahmednagar,
- 4) Shita Viswanath Salve,
Age-48 years, Occu:Household,
R/o-Aalvani, Tq-Parner,
Dist-Ahmednagar,
- 5) Bharti Shashikant Rohokale,
Age-45 years, Occu:Household,
R/o-Aalvani, Tq-Parner,
Dist-Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Maharashtra State, Mumbai-32,
- 2) The Superintendent of Police,
Ahmednagar, Dist-Ahmednagar,

- 3) The Police Station Officer,
Parner Police Station,
Tal-Parner, Dist-Ahmednagar.

...RESPONDENTS

WITH**CRIMINAL WRIT PETITION NO.248 OF 2021**

- 1) Shahaji Krushnant Gaikwad,
Age-56 years, Occu:Agri.,
R/o-Ambejalgaon, Tq-Karjat,
Dist-Ahmednagar,
- 2) Shriram Krushnant Gaikwad,
Age-44 years, Occu:Agri.,
R/o-Ambejalgaon, Tq-Karjat,
Dist-Ahmednagar,
- 3) Bhausahab Narayan Toradmal,
Age-46 years, Occu:Agri.,
R/o-Baheruwadi, Tq-Karjat,
Dist-Ahmednagar,
- 4) Vaijanta Shashikant Sonmali,
Age-44 years, Occu:Agri.,
R/o-Karjat, Tq-Karjat,
Dist-Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Maharashtra State, Mumbai-32,
- 2) The Superintendent of Police,
Ahmednagar, Dist-Ahmednagar,
- 3) The Police Station Officer,
Karjat Police Station,
Tal-Karjat, Dist-Ahmednagar.

...RESPONDENTS

WITH**CRIMINAL WRIT PETITION NO.47 OF 2021**

- 1) Ajinath S/o Sopan Sole,
Age-56 years, Occu:Agri.,
R/o-Arangaon, Tq-Jamkhed,
Dist-Ahmednagar,
- 2) Bapu Mahadeo Wagh,
Age-45 years, Occu:Agri.,
R/o-Dhanora, Tq-Jamkhed,
Dist-Ahmednagar,
- 3) Tatyasaheb Khanderao Jadhav,
Age-60 years, Occu:Agri.,
R/o-Dongaon, Tq-Jamkhed,
Dist-Ahmednagar,
- 4) Jayshree Jagannath Pawar,
Age-45 years, Occu:Agri.,
R/o-Jamkhed, Tq-Jamkhed,
Dist-Ahmednagar,
- 5) Bhausahab Vishwanath Gadade,
Age-42 years, Occu:Agri.,
R/o-Bawarwadi, Tq-Jamkhed,
Dist-Ahmednagar.

...PETITIONERS**VERSUS**

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Maharashtra State, Mumbai-32,
- 2) The Superintendent of Police,
Ahmednagar, Dist-Ahmednagar,
- 3) The Police Station Officer,
Jamkhed Police Station,
Tal-Jamkhed, Dist-Ahmednagar.

...RESPONDENTS

...
Mr. Rohit Nitin Patil Advocate for Petitioners in all Petitions.
Ms. P.R. Bharaswadkar, A.P.P. for Respondents in all Petitions.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE OF RESERVING ORDER : 17th JANUARY 2025

DATE OF PRONOUNCING ORDER : 19th MARCH 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. All these three Petitions have been filed for directing respondent Nos. 2 and 3 i.e. the Superintendent of Police, Ahmednagar and the Police Station Officer, Parner Police Station, Karjat Police Station and Jamkhed Police Station, respectively, to lodge First Information Report / criminal prosecution against the culprits as per report dated 12th December 2019 which was filed by the petitioners, respectively.

2. Heard learned Advocate Mr. Patil appearing for the petitioners and learned APP Ms. Bharaswadkar appearing for the respondents.

3. The petitioners contend that they are poor persons who were living hand to mouth to earn their livelihood. However, to improve their standard of living, they had invested their money with one Sunshine High Tech Infracon Limited. In fact the office bearers of the said company as well as the persons who were responsible to run the said company, had introduced the scheme to the petitioners and similarly situated thousands of people and had promised for the handsome return. However, the petitioners have been duped by the said company, as a result of which they have lost their hard earned money. It was then learnt that the said company was involved in public issue of securities without complying with the provisions of the Companies Act, 1956 and other regulations under the Securities and Exchange Board of India Act and regulations. The promoters and directors of the company as well as their agents had acted in connivance with each other to dupe the petitioners and thousands of people under the false promise to give high return for their investment in the company. Ultimately the petitioners had approached respondent No.3 for lodging the First Information Report (for short "the FIR"), however, no cognizance was taken. Even the report dated 12th December 2019 has not been considered as FIR and therefore, present writ petitions have been filed.

4. Learned Advocate for the petitioners has taken us through the documents on record. It is then shown as to how each petitioner has invested the money with the company but then it was told to the petitioners that they will not get the amount that has been invested by them and the basic rules and regulations have not been followed by the company. The written complaint has not been considered. Even the petitioners might be having an alternate remedy under Section 156(3) of the Code of Criminal Procedure, but that will not be a bar for exercise of the constitutional powers of this Court under Article 226 of the Constitution of India, as the public money is involved in the matter and large number of people have been duped. Learned Advocate for the petitioners relies on the decision in ***Maharashtra Chess Association vs. Union of India and others, (2020) 13 SCC 285***, wherein it has been held that, the principle that the writ jurisdiction of a High Court can be exercised when no alternative remedy exists and mere existence of alternate forums where the aggrieved person may secure relief, does not create a legal bar on a High Court to exercise its writ jurisdiction.

5. Learned Advocate for the petitioners, further, relies on Three Judge Bench decision by the Hon'ble Supreme Court in ***State of Punjab and others vs. Rajesh Syal, (2002) 8 SCC 158***, wherein it is held that different people have alleged to have been defrauded by the company and therefore, each offence is a distinct one and cannot be regarded as constituting a single series of facts. On the similar line in ***K. Manoj Reddy vs. Commissioner of Police and others, 2007 DGLS (A.P.) 164***, the learned Single Judge of Hon'ble Andhra Pradesh High Court has held that in financial scams each and every written complaint of a subscriber constitute an offence. Similar view was taken in ***Narinderjit Singh and Sahni and others vs. Union of India and others, (2002) 2 SCC 210***. Further the learned Advocate relies on the decision in ***National Anti Crime and Human Rights Protection of India vs. State of Punjab and others (Civil Writ Petition No.2066 of 2018, dated 30th July 2024)***, wherein the learned Single Judge of Hon'ble Punjab and Haryana High Court at Chandigarh, has held that whenever there is a complaint disclosing cognizable offence, then the FIR should be taken. The learned Advocate for the petitioners, therefore, prays for directions to be given to respondent Nos. 2 and 3.

6. Learned APP relies on the affidavit of Mr. Arun Radhakisan Avhad, the Police Inspector attached to Economic Offence Wing, Ahmednagar, stating that the petitioners are relying on the communication dated 19th July 2017 also, which is in fact annexed along with the petition. In that connection, the FIR was already registered under Section 406 and 420 of the Indian Penal Code on the basis of report by one Rajendra Kashinath Pachpute, with Kotwali Police Station, Ahmednagar on 18th February 2020. The said FIR was then transferred to Economic Office Wing, Ahmednagar. During the investigation then it was revealed that one more FIR has been registered vide Crime No.78 of 2019, under Section 420, 406 and 120-B of the Indian Penal Code in Kotwali Police Station, Baswada (Rajasthan). The accused persons were arrested and on the date of the affidavit, the accused persons were lodged in Baswada Central Jail, Rajasthan and therefore, in the crime registered with Kotwali Police Station, Ahmednagar there is no arrest in the matter. After the formalities are completed then the custody of the accused persons would be taken. The learned APP therefore, submits that the FIR is lodged and the act of those accused persons is under investigation. If we consider the said FIR, then it is in respect of

interest of many persons and the amount that has been duped of such persons, runs into Rs.1,27,61,500/- as stated in the FIR.

7. Certainly the decision of Three Judge Bench of Hon'ble Supreme Court in ***State of Punjai and others vs. Rajesh Syal*** (supra) clarifies that every person who has been defrauded by a company has a distinct cause of action and the complaint or FIR is maintainable by each one of them, therefore, every depositor who felt that he has been defrauded, could have approached the concerned police stations to lodge the FIR. If that complaint could have disclosed the cognizable offence, then the concerned police station was duty bound to record the FIR of such person. If there is failure, then the procedure has been laid down in ***Priyanka Srivastava and another vs. State of UP and another, 2015 (6) SCC 287***. A written complaint will have to be given to the concerned police inspector / police station officer and if no action is taken, then the said fact will have to be reported to the District Superintendent of Police or the copy of the complaint can be sent to the District Superintendent of Police. Thereafter if that authority also refuses or does not take any action, then the concerned person has right to approach under Section 156(3) of the Code of Criminal Procedure, to the jurisdictional Magistrate.

8. Along with the Petition the written communication dated 19th July 2017 has been filed, which appears to be a complaint by 17 persons including one Rajendra Kashinath Pachpute. Now, as per the affidavit of Police Inspector Mr. Arun Avhad, FIR came to be registered as per the contention of said Rajendra Pachpute, on 18th February 2020. That means, it appears that the said complaint dated 19th July 2017 has been taken cognizance of and the investigation is pending. Thereafter there is another complaint dated 9th July 2018, that is prior to the lodging of the FIR, to which also said Rajendra Pachpute and others were the signatories. Further, similar written complaint was given on 4th October 2019. It appears further that some more persons i.e. present petitioners and others lodged report to the Police Inspector, Parner Police Station, in November 2019. Then it appears that on 12th December 2019 the petitioners along with others have addressed the complaint / representation/ report to the District Superintendent of Police, Ahmednagar, copy of which is annexed along with these petitions. Now, it is stated that on the basis of this report, the offence ought to have been registered, however, since it is not registered, directions have been sought in these Writ Petitions.

9. The decision in ***Maharashtra Chess Association vs. Union of India and others*** (supra) is certainly binding on this Court. However, at the same time it is required to be seen that the facts in the said case were different. It was the matter on civil side and taking into consideration the prayer, it was then observed that the powers under Article 226 of the Constitution of India with the High Court are not subject to strict legal principles. It can still be exercised where no adequate alternative remedy is there and even if it is there, still that can be exercised. However, we are also bound by the decision in ***Sakiri Vasu vs. State of Uttar Pradesh and others, (2008) 2 SCC 409***, wherein the legal position was considered and it has been opined that although Section 156(3) of the Code of Criminal Procedure is very briefly worded, there is an implied power in the Magistrate under Section 156(3) of the Code of Criminal Procedure to order registration of a criminal offence and / or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. In clear terms, it has been laid down in Paragraph Nos. 26 and 27 as under:-

" 26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C. "

10. Further, in *Sakiri Vasu vs. State of Uttar Pradesh and others*, (supra) it was also noted that "it is true that alternative

remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

11. Thereafter, the Hon'ble Supreme Court in ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others, [(2016) 6 SCC 277]***, after taking note of ***Sakiri Vasu Vs. State of U.P. and Others*** (supra), has observed that:-

"5. This Court has held in *Sakiri Vasu v. State of U.P.* (2008) 2 SCC 409, AIR 2008 SC 907, that *if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court Under Article 226 of the Constitution of India, but to approach the Magistrate concerned Under Section 156(3) Code of Criminal Procedure. ----- We have said this in Sakiri Vasu case because what we have found in this Country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.*

6. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the concerned Magistrate Under Section 156(3), Code of Criminal Procedure, and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper

investigation in the matter, and he can also monitor the investigation."

12. Further, in ***M. Subramaniam and another vs. S. Janaki and another, (2020) 16 SCC 728***, the Three Judge Bench of the Hon'ble Supreme Court, when the High Court in that matter had given direction to register the FIR, quashed and set set aside that order. Therefore, with this clear legal position, no prayer which has been prayed in these Petitions can be allowed. We cannot even opine as to whether cognizable offence has been made out or not, but then as in the decision of ***M. Subramaniam and another vs. s. Janaki and another***, (supra), liberty was granted to the petitioners therein to approach the Magistrate under Section 156(3) of the Code of Criminal Procedure, we adopt the same procedure while disposing of these Petitions. Hence we pass following order:-

ORDER

- (I) All the Writ Petitions stand dismissed.
- (II) However, we observe that our order will not be an impediment in the way of the petitioners to

approach the police station once again and lodge a complaint and police being satisfied that a criminal offence is made out, may register the FIR.

(III) It will be also open to the petitioners to approach the jurisdictional Judicial Magistrate First Class, if deemed appropriate and necessary and then the learned Magistrate concerned may adopt the requisite procedure under Section 156(3) of the Code of Criminal Procedure.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR25