



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1408 OF 2024

Rahul Kailashappa Borse,
Age 31 yrs., Occ. Social Work,
R/o Shivajinagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Secretary,
Home Department, Mantralaya,
Mumbai – 32.
- 2 District Collector,
Collector Office, Jalgaon.
- 3 District Supply Officer,
Jalgaon, Tq. & Dist. Jalgaon.
- 4 Chief Executive Officer,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.
- 5 Education Officer (Primary),
Zilla Parishad, Jalgaon.
- 6 District School Nutrition Superintendent,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.
- 7 Block Education Officer,
Panchayat Samiti, Bhusawal.
- 8 Taluka School Nutrition Superintendent,
Panchayat Samiti, Bhusawal,

Tq. Bhusawal, Dist. Jalgaon.

- 9 Police Inspector,
Bazar Peth Police Station,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
- 10 The Superintendent of Police,
Jalgaon, Dist. Jalgaon.
- 11 Hindi Seva Mandal, Bhusawal,
Through it's Secretary,
Tq. Bhusawal, Dist. Jalgaon.

... **Respondents**

...

Mr. N.L. Jadhav, Advocate for petitioner

Mr. S.A. Gaikwad, APP for respondent Nos.1 to 3, 9 and 10

Mr. N.E. Deshmukh, Advocate for respondent Nos.4, 5 and 7

Mr. G.V. Rane, Advocate for respondent No.11

Respondent Nos.6 and 8 - served

...

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

RESERVED ON : 16th SEPTEMBER, 2025

PRONOUNCED ON : 16th OCTOBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition has been filed for following reliefs -

“(B) By issuing appropriate writ, order or directions in the nature of like nature respondents may kindly directed to lodge the FIR against the Headmistress of said school and other concerned persons under Section 13(1)(c)(d)(e) read with Section 13(2) of the Prevention of Corruption Act, according to I.P.C. 168, 193, 201, 406, 409, 420, 467, 468, 471 read with Section 34, according to new Bharatiya Nyaya Sanhita under Sections 202, 229, 238, 316(2), 316(5), 318(4), 338, 336(3), 340(2) read with Section 3(5) and under Sections 3 & 7 of the Essential Commodities Act in view of the complaint dated 05.02.2024 and they may be directed to conduct further investigation in the aforesaid crime.”

2 Heard learned Advocate Mr. N.L. Jadhav for petitioner, learned APP Mr. S.A. Gaikwad for respondent Nos.1 to 3, 9 & 10, learned Advocate Mr. N.E. Deshmukh for respondent No.4, 5 & 7 and learned Advocate Mr. G.V. Rane for respondent No.11.

3 Learned Advocate appearing for petitioner says that he is a social worker contending that there is misappropriation in respect of school mid-day meal, grain and other commodities in Shri. R.N. Mehta Hindu Primary Vidya Mandir, Bhusawal. He had lodged complaint to Block Education Officer, Panchayat Samiti, Bhusawal on 05.02.2024 stating that grains provided for nutrition mid-day meal to the students in the said school i.e. rice, gram, lentil, moth-bean were illegally and unauthorizedly moved / transported from the school with an intention to sell it in the open market.

23 bags were found in Ape rickshaw while transporting the same from the school. The rickshaw was found on road going towards Gadkari Nagar. He has quoted registration number of Ape rickshaw also and upon statement of driver it was stated that he was carrying the grains towards one Trader Mr. Yogesh Heda. On the other hand, when inquiry was made with Yogesh Heda, he told that grains were being transported as per instructions of Headmistress of school. After the inspection of bags, Government labels were found. The concerned persons have not explained as to why and in what circumstances those 23 bags were being transported. The Headmistress had come to the spot and then abused the petitioner and told that those bags were being transported to another school i.e. Sant Gadge Baba High School of same institute. It appears that Block Education Officer has endorsed the same report instead of lodging First Information Report. The concerned persons have made only the formalities of report. The Taluka President of School Nutrition, Panchayat Samiti, Bhusawal had then visited the school on 09.02.2024 and made search. He found excess grain bags and expired spices in large quantity. Report to that effect was also submitted. The District Supply Officer, Jalgaon informed the Education Officer (Primary) to make inquiry. The petitioner had called for the CCTV footage which was agreed to by Headmistress. The petitioner was constrained to make an application on 20.02.2024 to the Superintendent of School Nutrition Meal Scheme,

Panchayat Samiti, Bhusawal regarding the entire episode. In all 27 questions were formulated and Headmistress of school was asked to answer. The show cause notice and reply given by school Headmistress has been annexed. Taking into consideration all these events, when no progress was found, the petitioner had made complaint about the incident to Chief Executive Officer, Zilla Parishad, Jalgaon and to Collector, Jalgaon. He was required to make correspondence again and again, but it appears that only the report has been submitted and they have been considered as irregularities. The Inquiry Officer appears to be in collusion with the Headmistress. The very purpose for which such scheme was introduced has not been adhered to. Ultimately it appears that Departmental Enquiry was initiated against the Headmistress, but no action on the criminal side has been taken. In fact, the Headmistress and other persons have committed offence under Section 405, 406, 409, 420 of the Indian Penal Code, 1860 and under Sections 3 and 7 of the Essential Commodities Act, 1955. Hence, present petition.

4 Learned Advocate for petitioner has taken us through all the correspondence which he has made and response he got. But learned Advocate submits that only departmental enquiry has been initiated. Merely because there is alternative remedy, this Court cannot discourage the petitioner from seeking directions to register the First Information Report.

He relies on the decision in **Vinod Kumar Pandey and another vs. Seesh Ram Saini and others** with companion matters [2025 Supreme (SC) 1665], wherein it has been held that since it is the duty of police to register First Information Report if a prima facie cognizable offence is made out, police is not required to go into the genuineness and credibility of the said information. It has been so laid down very clearly in **Ramesh Kumari vs. State (NCT of Delhi)** [(2006 2 SCC 677)] that the genuineness or credibility of the information is not the condition precedent for registration of First Information Report. In **Ramesh Kumari** (supra) the Hon'ble Supreme Court denounced the dismissal of the petition seeking registration of First Information Report, solely on the ground of alternative remedy and held that ground of alternative remedy would not be a substitute in law for refusing to register a case when complaint of the citizen makes it a cognizable offence.

5 Learned APP for respondent Nos.1 to 3, 9 and 10 submits that as regards the complaint that was made by petitioner there was preliminary inquiry. On 10.08.2024 the petitioner gave it in writing that he has filed writ petition before this Court and he would rely on the order that would be given in the petition and, therefore, he takes back his complaint. When such statement has been given in writing by him, the police have not made any inquiry with him, however, statement of Headmistress was taken, which

showed that there were about 158 students, who were taking education in R.N. Mehta Hindi Primary Vidya Mandir, Bhusawal and their another school is near Limpus club. She denied that said bags were for sale in the open market. Those bags were taken from one school to another school. Petitioner has filed the complaint only to defame the school. When such statements have been given, the police have not taken further steps.

6 Respondent No.11 Madhulata Deviprasad Sharma, the Secretary of Hindi Seva Mandal, Bhusawal has filed affidavit-in-reply. It is denied that transportation of grains was illegal and with an intention to sell it in the open market. Show cause notice was issued to Headmistress upon the questionnaire. The Government had asked for the deposit of amount of Rs.38,100/- because of expiry of spices in the stock and that amount has been deposited. As regards mid-day meal is concerned, the Headmistress had given her explanation. She had stated that the construction of road was going on in front of school and because of the dust as well as she was supposed to go on leave on account of death of her relative, she decided to send the grain to another school and get the cooked food for the students. The explanation appears to have been accepted by Zilla Parishad authorities and there is no *mala fide* intention. When the petitioner has alternative remedy under Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023,

he cannot invoke the jurisdiction of the constitutional Court for the registration of offence.

7 The first and the foremost fact to be noted is that here, now, there are disputed facts as to whether the grains those were found in the Ape rickshaw were for selling it in the open market or those were to be transported to the another school for getting the cooked food. Here, interestingly, the petitioner has done his own investigation, but then when it came to preliminary inquiry in to his complaint by police, he has stated that now when he has already filed writ petition, his complaint application should be disposed of. This Court under its writ jurisdiction cannot consider the disputed facts. Unless there is some element worth showing that a cognizable offence has been committed, even this Court in its writ jurisdiction cannot give directions for registration of First Information Report.

8 As regards registration of the offence is concerned, we would like to rely on the decision in **Sakiri Vasu vs. State of Uttar Pradesh and others** [(2008) 2 SCC 409], wherein it has been observed that -

“25. we have elaborated on the above matter because we often find that when someone has a grievance that the First Information Report has not been registered at a police station and/or an appropriate investigation is not being done by the police, he rushes to the High

Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers and if that is of no avail, by approaching a Magistrate concerned under Section 156(3).

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 ?”

9 A decision in **Sakiri Vasu** (supra) was then relied in case of **T.C. Thangaraj vs. V. Engammal & others** [2011 (12) SCC 328] and **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others** [2016 (6) SCC 227]. In case of **Sudhir Tambe** (supra) it has been observed that -

“[2] This Court has held in **Sakiri Vasu vs. State of U.P.** [2008 2 SCC 409], 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) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in **Sakiri Vasu v. State of U.P.** [2008 2 SCC 409] 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.

[3] 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 Magistrate concerned under Section 156(3) CrPC 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.”

10 Further, all these decisions are referred in three Judge Bench of Hon’ble Supreme Court in **M. Subramaniam and others vs. S. Janaki** [2020 (16) SCC 728]. Especially, paragraph Nos.2, 3 and 4 from **Sudhir Tambe**

(supra) were referred. Important point to be noted is that in Three Judge Bench decision in **M. Subramaniam** (supra), the order passed by Madurai Bench of Madras High Court to register the case i.e. First Information Report on the basis of complaint was challenged. That order was set aside.

11 In **Vinod Kumar Pandey** (supra) also the ratio laid down in **Sakiri Vasu** (supra) has been considered. Paragraph No.29 from **Vinod Kumar Pandey** (supra) reads thus -

“29 Undoubtedly, the High Court(s) should discourage writ petitions or petitions under Section 482 of the Code of Criminal Procedure where alternative remedies are available. Nonetheless, as observed even in **Sakiri Vasu vs. State of Uttar Pradesh and others** [(2008) 2 SCC 409] it is equally true that alternative remedy is not an absolute bar for invoking the extraordinary jurisdiction or the inherent jurisdiction of the High Court under Article 226 of the Constitution or Section 482 of the Code of Criminal Procedure.”

And then note has been taken of the decision in **Ramesh Kumari** (supra). No doubt, it is the duty of the police to register a First Information Report if a *prima facie* cognizable offence has been made out, however, in **Vinod Kumar Pandey** (supra) the other complainants had approached the police authorities by means of complaints to get the matter investigated but no such action was purportedly taken. There, when those complainants had

approached Hon'ble Delhi High Court, it had given opinion that *prima facie* a cognizable offence has been made out and, therefore, only some modification in the order of Hon'ble Delhi High Court was made in **Vinod Kumar Pandey** (supra). At the cost of repetition, here, in this case, it appears that inquiry has been made by various authorities i.e. Block Education Officer, Superintendent, Mid Day Meal Scheme Committee and a specific observation has been made that said grains were not being transported for open market but were meant for transportation to another school. Under such circumstance, when there is no evidence even *prima facie* that any cognizable offence is made out to take cognizance of, we do not find this to be a fit case where this Court can exercise its constitutional jurisdiction, however, the petitioner has remedy to approach the Magistrate under Section 156(3) of the Code of Criminal Procedure and we adopt the same view as was adopted in case of **M. Subramaniam** (supra) and grant liberty to petitioner to approach learned Magistrate of competent jurisdiction under Section 156(3) of the Code of Criminal Procedure. If such application is made, then the concerned Magistrate to decide it on its own merits.

12 With these observations, writ petition stands disposed of.

(**HITEN S. VENEGAVKAR, J.)**
agd

(**SMT. VIBHA KANKANWADI, J.)**

Date : 16.10.2025.

Later on :

13 Learned Advocate for petitioner points out that in view of order passed by this Court on 22.08.2024, an amount of Rs.50,000/- (Rupees Fifty Thousand only) was deposited with this Court. Taking into consideration the observations, we direct that the an amount of Rs.40,000/- (Rupees Forty Thousand only) be returned to petitioner and an amount of Rs.10,000/- (Rupees Ten Thousand only) be transferred to the High Court Legal Services Sub Committee, Aurangabad.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

agd