



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL WRIT PETITION NO.1709 OF 2024

Anand Kashiram Sapkale,
Age 64 yrs., Occ. Retired,
R/o Plot No.30, Block – 2,
Dhande Nagar, Jalgaon,
Tq. & Dist. Jalgaon.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Principal Secretary,
Department of Registration and
Stamps, Mantralaya,
Mumbai – 400 032.
- 2 The Inspector General of Registration and
Controller of Stamps,
Ground Floor, Opp. Council Hall,
New Administrative Building,
Bund Garden Road, Agarkar Nagar,
Pune – 411 001.
- 3 Joint Sub Registrar,
Class – II, Jalgaon 3,
Vishram Pride,
Survey No.436 A-1, Adarsh Nagar,
Near R.T.O. Office,
Jalgaon – 425 002.
- 4 Ashok Soma Patil,
Chairman,
Union Bank Karmachari Saha Bhadekaru Saha
Bhagidari Gruhanirman Sanstha Mardayadit,
Jalgaon,
R/o Pimprala, Tq. & Dist. Jalgaon.

- 5 Shrikrishna Harishchandra Belorkar,
Secretary,
Union Bank Karmachari Saha Bhadekaru Saha
Bhagidari Gruhanirman Sanstha Mardayadit,
Jalgaon,
R/o Pimprala, Tq. & Dist. Jalgaon.
- 6 Ish' the Landmark,
Through it's Partner Jagdish Pralhad Patil,
having office at – Shop No.6,
'A' Wing, Stadium Complex,
Zilla Peth, Jalgaon.
R/o Block No.2 Manisha,
State Bank Colony, Ganpati Nagar,
Jalgaon – 425 001.
- 7 Sunil Dinkarrao Chaudhari,
Flat No. B-6, Shree Sai Apartment,
Union Bank Karmachari Saha Bhadekaru Saha
Bhagidari Gruhanirman Sanstha Mardayadit,
Jalgaon,
R/o Pimprala, Tq. & Dist. Jalgaon – 425 002.
- 8 Sagar Yadav Patil,
Sudatta Colony, Near Police Colony,
Jalgaon – 425 001.

... **Respondents**

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Mr. S.A. Sapkale, Advocate for petitioner

Mr. V.K. Kotecha, APP for State

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

DATE : 29th JANUARY, 2025

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

1 Present Petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India for following reliefs :

“B) By a writ of mandamus, or any other writ, or order or directions in the like nature, the respondent no. 2 & 3 be kindly directed to take action on the complaints of the petitioner dated 26.08.2024 & 14.08.2024 respectively & conduct enquiry if required and proceed by commencing prosecution under section 83 for various offences along with offences under section 82 of The Registration Act, 1908 as expeditiously as possible within 15 days.”

2 Heard learned Advocate Mr. S.A. Sapkale for petitioner and learned APP Mr. V.K. Kotecha for State.

3 Learned Advocate for petitioner submits that petitioner is a member of Union Bank Karmachari Saha Bhadekaru Sahabhagidari Gruhanirman Sanstha Maryadit, Jalgaon from 28.03.2003, of which respondent Nos.4 and 5 are Chairman and Secretary. Petitioner is also owner of Flat No.B-5 in the above mentioned society's building named 'Shree Sai Apartment'. Though respondent Nos.4 and 5 were not elected as Chairman and Secretary of said society, still they were illegally acting as the same. As the building of society became old, it was decided to redevelop the same. While redeveloping the building area of flat of petitioner has

been illegally reduced. Concerned respondents have created forged documents for registering redevelopment agreement. Accordingly, the petitioner has filed complaint dated 14.08.2024 before respondent Nos.2 and 3 for taking action against the accused persons named in the said complaint. As no action has been taken of said complaint dated 14.08.2024 by respondent Nos.2 and 3, the petitioner has again filed complaint dated 26.08.2024 before said respondents. But on the said complaint also respondent Nos.2 and 3 have not taken any action, therefore, the present petition for aforesaid reliefs.

4 Learned Advocate for petitioner, in support of his submissions, relies upon judgment of Hon'ble Supreme Court in case of **Sindhu Janak Nagargoje vs. State of Maharashtra and others** [2023 LiveLaw (SC) 639], arising out of SLP (Cri.) No.5883 of 2020. That appeal was directed against the order passed by this Court on 05.10.2020 in Criminal Writ Petition No.817 of 2020 whereby this Court had dismissed the writ petition filed by the appellant to register the offence as per the complaint submitted by the appellant. Reliance was placed on **Lalita Kumari vs. State of Uttar Pradesh and others** [2014(2) SCC 1]. The learned Advocate for petitioner vehemently submits that as per complaints filed by petitioner on 14.08.2024 and 26.08.2024 respondent Nos.2 and 3 should have initiated inquiry by commencing prosecution under the provisions of the Registration Act.

5 Considering the facts of present case and reliefs claimed, we may take note of the decision in case of **Sakiri Vasu vs. State of Uttar Pradesh and others**

[2008(2) SCC 409], wherein it has been observed thus :

“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 ?”

6 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 (supra) it has been observed thus :

“[2] This Court has held in *Sakiri Vasu v. 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.”

7 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. Taking into consideration the decision in **Sakiri Vasu** (supra), **Mohd. Yusuf vs. Smt. Afaq Jahan** [2016(1) SCC 627] and **Sudhir Tambe** (supra), as aforesaid, the impugned order was set aside. Therefore, in this case, the Petitioner has the remedy to approach the Magistrate under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 and we adopt the same course as was adopted in case of **M. Subramaniam** (supra) and observe that this Court has not expressed any opinion on the merits of the complaint as to whether it is disclosing any criminal offence or not. However, this proceeding should not be taken as an impediment for the Petitioner to approach concerned Judicial Magistrate, if advised. Of course, the Magistrate is then guided by the provisions of law. With these observations, the Petition stands disposed of.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)