



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1754 OF 2018

- 1) Bhaskar S/o Vishnu Mapari,
Age-50 years, Occu:Agri.,
R/o-Loni (Kh.), Taluka-Rahata,
District-Ahmendagar,
- 2) Gorakhdada S/o Yeshwantrao Gaware,
Age-45 years, Occu:Press Reporter,
R/o-Babhaleshwar, Taluka-Rahata,
District-Ahmendagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Chief Secretary,
Mantralaya, Mumbai-400032,
- 2) The Secretary,
Through its Forest and Revenue
Department, Mantralaya,
Mumbai-400032,
- 3) The Range Forest Officer,
Dhule Division, Near Police Training
Centre, Lenin Chowk, Dhule-424001,
- 4) M.S. Reddi,
Age-Major, Occu:Service,
Chief Conservator of Forest,
Field Director, Amravati Melghat
Tiger Project, Near Government
Girls High School Camp Road,
Amravati-444602,

- 5) Shri Ishwar S/o Kashiram Shirsat,
Age-67 years, Occu: Pensioner (R.F.O.),
R/o-8, Forest Colony, Near Nagaonbari,
Deopur, Dhule, District-Dhule,
- 6) The Police Inspector,
Shirpur Police Station, Shirpur,
Tq-Shirpur, District-Dhule,
- 7) The Superintendent of Police,
Dhule Division, Dhule,
District-Dhule.

...RESPONDENTS

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Mr. B.V. Dhage Advocate for Petitioners.
Mr.N.R. Dayama, A.P.P. for Respondent Nos. 1 to 4, 6 and 7.
Ms. Renuka V. Ghule Advocate for Respondent No.5,
appointed through Legal Aid.

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

DATE : 18th FEBRUARY, 2025

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

1. Present Petition has been filed for following reliefs:-

"B] Their Lordship be pleased to issue the writ of mandamus or any other appropriate writ, order, direction in the nature of mandamus directing the respondent No.1 & 2 to file the criminal complaint against the respondent No.4 to the respondent No. 6 & 7 on the basis of report of Divisional Forest Officer dated 30.11.2007 in respect of charges leveled against the respondent No.4 involving the charges of corruption in criminal nature by way preparing fraudulent documents and thereby misappropriated the Government

fund and on the basis of the complaints filed by the Forest Offices of Forest Department, Amravati,

C] Their Lordship be pleased to issue writ of mandamus or any other appropriate writ, order, direction directing the respondent No.1 and 2 to suspend the respondent No.4 during the pendency of criminal case.

D] Their Lordship be pleased to reject the report of the Executive Engineer dated 13.01.2010 which is contrary to the earlier report of Divisional Forest Officer, Dhule and revoke letter dated 7.3.2012 issued by Chief Forest Officer Head and Forest Force, Maharashtra State, Nagpur."

2. Heard learned Advocate Mr. Dhage for the petitioners, learned APP Mr. Dayama, appearing for respondent Nos. 1 to 4, 6 and 7 and learned Advocate Ms. Renuka Ghule appearing for respondent No.5, appointed through Legal Aid.

3. Learned Advocate appearing for the petitioners submit that the petitioners had made complaint to respondent Nos.1 to 3 in respect of the corruption made by respondent No.4 by preparing forged and fabricated documents. The Crores of rupees of Government money have been grabbed by respondent No.4 and with the said amount he has taken huge movable as well as immovable properties at various places. The Government had appointed the High Power Committee to inquire the charges of

corruption levelled against respondent No.4. The detailed report regarding the same was given on 30th November 2007. It has been concluded that respondent No.4 has adopted illegal tactics of corruption by various methods by preparing forged and fabricated documents and accumulated huge movable as well as immovable property. The Government has not taken either criminal or civil action against respondent No.4. Respondent No.5 had filed Criminal Writ Petition No. 474 of 2009 against respondent No.4 and others before this Court after considering that the Government was not taking any action against respondent No.4. The Government had then appointed Executive Engineer to make inquiry against the charges of corruption levelled against respondent No.4. The said Executive Engineer, without going through the documents, filed the report on 13th January 2010, contrary to the report of Divisional Forest Officer dated 30th November 2007. This is done only to save and protect respondent No.4. Respondent No.5 had filed criminal cases against respondent No.4 and other 33 persons before the learned Judicial Magistrate First Class, Shirpur, District-Dhule and the concerned Court passed orders on 11th October 2013 and 2nd June 2015, to bifurcate/scrutinize the cases separately for presentation in competent Court i.e. criminal cases pertaining to

corruption before the Special Court under the Prevention of Corruption Act and for charges under the Indian Penal Code before the learned Judicial Magistrate First Class, Shirpur. In the Writ Petition before this Court, statement was made that respondent No.5 has already taken decision and approached the concerned Court and then speaking order came to be passed on 28th January 2014. However, according to the petitioners, in the said order this Court had not taken into consideration the inquiry report of the Divisional Forest Officer dated 30th November 2007. Respondent Nos.1 to 3 ought to have taken action against respondent No.4 by filing criminal complaint and he ought to have been dismissed from the service on the basis of report of the Divisional Forest Officer dated 30th November 2007. As the said action is not taken, the present Petition has been filed.

4. Learned Advocate for the petitioners has taken us through the report dated 30th November 2007, 13th January 2010, order passed by this Court on 28th January 2014, and other complaints and submitted that unless the Government curtails the acts of corruption by taking appropriate legal action, there will not be a faith in the minds of general public and in fact when the

Government money has been accumulated by adopting illegal procedure, then the concerned Government servants should be made accountable.

5. The learned APP submits that it was open for the petitioners to file the First Information Report (for short the "FIR") as it has been filed by respondent No.5. Further, when respondent No.5 has already filed the complaint then the FIR on the same point need not be entertained. The learned Advocate who has been appointed to represent respondent No.5 states that respondent No.5 has filed Criminal Miscellaneous Applications before the different Courts as directed by the learned Judicial Magistrate First Class. In all 58 complaints / proceedings have been filed. Respondent No.5 is also fighting for the interest of public and has made complaint in respect of the illegal activities of respondent No.4 and others.

6. It is to be noted that here the petitioners pray for registration of the FIR, however, we would like to rely on *Sakiri Vasu Vs. State of Uttar Pradesh and others, 2008 (2) SCC 409*, which was then followed in *T.C. Thangaraj vs. V. Engammal & others, 2011(12) SCC 328*, *Sudhir Bhaskarrao Tambe vs.*

Hemant Yashwant Dhage and others, 2016(6) SCC 227 and M. Subramaniam and others vs. S. Janaki, 2020(16) SCC 728. In ***Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others, (supra),*** a note has been taken of the decision in ***Sakiri Vasu Vs. State of Uttar Pradesh and others, (supra),*** wherein it has been observed 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."

7. In ***Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others, (supra),*** it is then specifically observed that:-

" 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."

. It has been further observed that:-

" 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."

8. Further, all these decisions are referred in Three Judge Bench decision of the Hon'ble Supreme Court in ***M. Subramaniam and others vs. S. Janaki***, (*supra*). 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 Petitioners have 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 that complaint is disclosing any criminal offence or not. However, this proceeding should not be taken as an impediment for the petitioners to approach concerned Judicial Magistrate, if advised. Of course, the Magistrate is then guided by the provisions of law.

9. With the above observations, the Writ Petition stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25