

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5109 OF 2018**

Pranav Kulkarni

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

WITH**CRIMINAL WRIT PETITION NO. 3301 OF 2018**

VF Brands India Pvt. Limited & Ors.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr.Sanjeev Kadam a/w. Mr.Kushal Mor, Mr.Amit Jajoo, Mr.Vedant Chhajed,
Mr.Siddhant Trivedi & Mr.Aryan Deshmukh i/b. Indus Law for Petitioners.
Mrs.A.A. Takalkar, A.P.P. for Respondent No.1-State.
Mr.Chaitanya Pendse a/w. Mr.Raghavendra Mehrotra i/b. Lawkhart Legal
Advocates & Legal Consultants for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 14th February 2024.

P.C. :

1) Both the Petitions are filed under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code (Cr.P.C.) for quashing of M.E.C.R. No. 05 of 2017 and consequent chargesheet filed thereof dated 3rd January 2022 and further proceedings arising therefrom.

1.1) It is an admitted fact on record that, after completion of investigation of M.E.C.R. No. 05 of 2018 registered with M.R.A. Marg Police Station, Mumbai, for the offence punishable under Sections 406, 420, 467, 468, 471 read with 34 of the Indian Penal Code (I.P.C.), the Investigating Officer has filed chargesheet.

2) As the police have already submitted chargesheet, the Petitioners are having substantive alternate statutory remedy under the provisions of the Criminal Procedure Code before the trial Court.

3) It is a settled position of law and as has been decided in catena of decisions by the Hon'ble Supreme Court that, ordinarily the Court will not entertain the Petition under Article 226/227 of the Constitution of India, where the Petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is well recognized principle which gained judicial recognition that, the High Court should direct party to avail himself of such remedies, one or the other before he resorts to the constitutional remedy.

3.1) Reliance is placed on the following decisions :

- i) Thansingh Nathmal Vs.The Superintendent of Taxes, Dhubri & Ors., reported in AIR 1964 SC 1419.
- ii) A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors., reported in (2000) 7 SCC 695.

- iii) Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329.
- iv) Radhey Shyam & Anr. Vs. Chhabi Nath & Ors., reported in (2015) 5 SCC 423.
- v) Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr., reported in (2019) 419 ITR 440 (SC).
- vi) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors., reported in (2019) 9 SCC 538.
- vii) Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., reported in 2021 SCC OnLine SC 801.

4) Mr. Kadam, learned counsel for Petitioners submitted that, filing of application for discharge or contesting the said case before the trial Court is not an efficacious alternate remedy and therefore the Petitioners may not be relegated to avail the same before the trial Court.

5) According to us, filing an application for discharge before the trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioners cannot be permitted to raise a specious plea calling upon this Court to adjudicate his innocence in a Petition under Article 226 of the Constitution of India. It is against the settled principles of law. At the same time, the Petitioners cannot be permitted to make the statutory provisions of the Code of Criminal Procedure otious, by directly approaching this Court under Article 226 of the Constitution of India.

6) The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. Aryan Singh, dated 10th April 2023 passed in Criminal Appeal No. 1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022)* has held that, the High Court cannot conduct a mini trial for appreciation of evidence on record, while dealing with an application under Section 482 of Cr.PC., as it is a mini trial and consider the applications as if those are against the judgment and Orders of the Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.PC., the Court is not required to conduct a mini trial.

7) The Hon'ble Supreme Court in the case of *Iqbal alias Bala and Ors. Vs. State of U.P and Ors., reported in (2023) 8 SCC 734 : 2023 SCC OnLine SC 949*, in para No.8, has held that, although the allegations levelled in the F.I.R. does not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offence, yet the Hon'ble Supreme Court was of the view that, the Appellants therein should prefer discharge application before the Trial Court under Section 227 of Cr.PC., as the investigation was over and chargesheet was ready to be filed before the competent Court. That, in such circumstances, the Trial Court should be allowed to look into the materials which the Investigating Officer might have collected forming part of the chargesheet.

8) In view of the above and by reserving the alternate remedy of filing application for discharge and/or to contest the said case before the trial Court in favour of the Petitioners, both the Petitions are disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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