
(2019) 07 BOM CK 0080
In the Bombay High Court
Case No : Criminal Writ Petition No. 536 Of 2016

Arti	Vs	APPELLANT
State Of Maharashtra And Ors		RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 156(3)
Indian Penal Code, 1860 — Section 34, 193, 380, 448, 451, 453, 506
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 BOM CK 0080

Hon'ble Judges : P.N. Deshmukh, J; Pushpa V. Ganediwala, J

Bench : Division Bench

Advocate : G.L. Sharma, R. Tajne, T. Udeshi, S.N. Maniyar

Final Decision : Dismissed

Judgement

P.N. Deshmukh, J

1) Heard Shri Sharma, learned Counsel for petitioner, Ms. Udeshi, learned Additional Public Prosecutor for respondent nos.1 to 4, and Ms. Maniyar,

learned Counsel for respondent nos.5 and 6.

2) The prayer clauses (i) and (ii) in this petition read as under :

â??(i) Issue appropriate writ, directing the respondent nos.2, 3 and 4 to initiate investigation of cognizable offence alleged in complaint dated

5/10/2014 lodged by petitioner against the respondent nos.5 and 6 by registering First Information Report under Section 154 of Criminal Procedure

Code for offences punishable under Sections 448, 451, 453, 506, 380 and 193 r/w Section 34 of Indian Penal Code.

(ii) Punish the respondent nos.2, 3 and 4 for contempt of Court for having committed willful breach of directions of Hon'ble Apex Court observed in

Lalita Kumari vs. State of U.P., cited at 2013 (4) Crimes 243 (SC), Sandip Shukla vs. State of Maharashtra, cited at 2008 All MR (Cri) 3468 (F.B.

and Giridari vs. State of Maharashtra, cited at 2013 All MR (Cri) 1266.â??

3) Shri Sharma, learned Counsel for petitioner, submits that in spite of filing of report by petitioner with respondent no.4 on 5/10/2014, there was

inaction on the part of said respondent in not registering the offences and, therefore, petitioner was required to make representation to respondent

nos.2 and 3, which is on record at Annexure 15.

4) Perusal of the affidavitâ??inâ??reply of respondent State reveals that representation made to respondent nos.2 and 3 was duly acted upon and on

enquiry, it is revealed that the flat in question was originally purchased by the father of the petitioner and respondent no.5 in the year 1992 by way of

registered sale deed. After demise of father, even today in the record of Nagpur Municipal Corporation, he is shown as the owner of the said flat. The

yearly property tax notice is issued even today in the name of the father and mother of respondent no.5. Respondent no.4 also enquired with the

Nagpur Improvement Trust as to the ownership of the said flat by issuing a communication. The Nagpur Improvement Trust in reply has intimated

that the alleged flat stands in the name of the petitioner, respondent no.5 and their another brother, namely, Ganesh Sharma. The petitioner is claiming

self ownership of the flat on the basis of relinquishment/deed of release allegedly executed in her favour by her brother. It is further submitted that

perusal of the deed of release makes it clear that the said deed though prepared was never executed since no proper stamping of the Subâ??Registrar

would be seen on the same.

5) We also note that during the course of enquiry, the Investigating Agency came across communication dated 2/1/2001 addressed to the petitioner by

Subâ??Registrar, Nagpur intimating her about non execution of said deed of release due to non filing of â??no objection certificateâ?? from Nagpur

Improvement Trust. It was further intimated to her that in the event such objection is not removed within 30 days, her execution of documents would

be refused. From the affidavitâ??inâ??reply it is further revealed that from the statements of neighbours, respondent nos.5 and 6 are found residing in the

flat in question from considerable number of years and petitioner never resided in the said flat. Learned Counsel for petitioner though submits that the

panchanama drawn and electric bills show that the petitioner is in possession of flat, in writ jurisdiction we are not deciding ownership of the flat in

question nor documents relied by petitioner being electricity bill, etc. can be considered as documents of proof of title.

6) Having considered the subject matter as aforesaid and the law laid down by the Hon'ble Apex Court in the case of Sudhir Bhaskarrao Tambe vs.

Hemant Yashwant Dhage and others {(2016) 6 SCC 277}, petition is not liable to be entertained. Paras 2 and 3 of the said judgment of the Hon'ble

Apex Court, which are relevant, are reproduced as under :

â??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) Cr.P.C. If such an application under

Section 156(3) Cr.P.C. 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 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.

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) Cr.P.C. 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.â??

7) In view of said law as well as settled position in the case of Sakri Vasu vs. State of U.P. {(2008) (2) SCC 409}, no such directions as prayed in this

petition can be issued. The petition is, therefore, devoid of merits and hence, the same is dismissed.

8) Rule is discharged. No order as to costs.