T7ITEM NO.58 COURT NO.7 SECTION IIA

> SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).7022/2009

(From the judgement and order dated 08/09/2009 in CRLWP No. 2482/2008 of The HIGH COURT OF BOMBAY)

SUDHIR BHASKARRAO TAMBE

VERSUS

HEMANT YASHWANT DHAGE & ORS.

Respondent(s)

Petitioner(s)

(With appln(s) for exemption from filing O.T., intervention, stay, permission to file additional documents Vol.-III and office report) WITH SLP(Crl) NO. 7219 of 2009 (With appln(s) for stay and office report)

Date: 12/04/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU HON'BLE MR. JUSTICE A.K. PATNAIK

Mr. Shanti Bhushan, Sr. Adv. For Petitioner(s)

Mr. Mr. In SLP 7022/2009 R.N. Dhorde, Adv.

T.M.Kanawade, Adv.

Mr. M.Y.Deshmukh, Adv.for

Mr. Rameshwar Prasad Goyal, Adv.

For Petitioner(s) Mr. R.F.Nariman, Sr. Adv.

Mr. R.N.Dhorde, Adv. In SLP 7219/2009

Mr. T.M.Kanawade, Adv.

Mr. Sushil Karanjkar, Adv.

Mr. Vishal Patil, Adv.for

Mr. K.N. Rai, Adv.

For Respondent(s) Mr. Ram Jethmalani, Sr. Adv.

Mr. Sushil Kumar, Sr. Adv.

Mr. Arun Kanade, Adv.

Ms. P.R. Mala, Adv.

Ms. Syed Mazag Andrabi, Adv.for

Mr. Rajnish Prasad, Adv.

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Mr. Arun R. Pednekar, Adv.

Mr. Sanjay Kharde, Adv.for

Ms. Asha Gopalan Nair , Adv

Mr. Jayant Bhushan, Sr. Adv.

Mr.Jitendra Kumar ,Adv

UPON hearing counsel the Court made the following ORDER

Leave granted.

The Appeals are allowed in terms of the signed order.

In view of the order passed in the appeals, no orders need be passed on the application for intervention (Parveen Kr. Chawla) Court Master (Indu Satija) Court Master

[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.766 OF 2010
(Arising from SLP(Crl.) No.7022/2009)

Sudhir Bhaskarrao Tambe

..Appellant

versus

Hemant Yashwant Dhage & Others

.. Respondents

WITH

CRIMINAL APPEAL NO. 767 OF 2010 (Arising from SLP(Crl.) No.7219 of 2009)

ORDER

Leave granted.

These Two Appeals have been filed against the common impugned judgment of the High Court of Bombay dated September 08, 2009.

The facts in detail have been set out in the impugned judgment and hence we are not repeating the same here.

By the impugned order, the Bombay High Court has, in paragraph 9 of its order, changed the Investigating Officer and appointed a Special Investigating Officer to investigate into the alleged offence.

This Court has held in Sakiri Vasu vs. State of U.P. & Others, reported in AIR 2008 SC 907, that if a person has a grievance that his F.I.R. 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

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226 the High Court under Article $\circ f$ not to go to the India, of Constitution but to approach the concerned under Section 156(3), Cr.P.C.. Ιf such Magistrate an application under Section 156(3), Cr.P.C. is made and the

Magistrate is, prima facie, satisfied, he can direct the

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's case because what we have found in this country is that the High Courts have been flooded with writ for of the first petitions praying registration information report or praying for a proper investigation. 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 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

or

if

it

has

already

been

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investigation in the matter, and he can also monitor the investigation.

registered,

F.I.R.

to

be

In view of the settled position in Sakiri Vasu's case(supra), the impugned judgment of the High Court cannot sustained is hereby aside. The concerned he and set Magistrate is directed to ensure proper investigation into the alleged offence under Section 156(3), Cr.P.C. and if he deems it necessary, he can also recommend to the S.S.P./S.P. concerned change of the Investigating Officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties any material wish before may produce thev the concerned Magistrate. The learned Magistrate shall be uninfluenced by any observation in the impugned order of

the High Court.			
	The Appeals are allowed	in the above terms.	
passed		d order, no orders need be for intervention and it i	s
disposed	of accordingly.		
		J. [MARKANDEY KATJU]	

NEW DELHI;

APRIL 12, 2010

.....J. [A.K. PATNAIK]