

and it is disposed of accordingly.

(Parveen Kr. Chawla) (Indu Satija)
Court Master 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)

O R D E R

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

-2-

not to go to the High Court under Article 226 of the
Constitution of India, but to approach the concerned
Magistrate 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

F.I.R. 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's 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.

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), 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

-3-

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

In view of the settled position in Sakiri Vasu's case(supra), the impugned judgment of the High Court cannot be sustained and is hereby set aside. The concerned 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 may produce any material they wish before 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.

In view of the aforesaid order, no orders need be passed on the application for intervention and it is disposed of accordingly.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
APRIL 12, 2010

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