

SUPREME COURT OF INDIA (FROM BOMBAY) (D.B.)

**SUDHIR BHASKARRAO TAMBE
V/S
HEMANT YASHWANT DHAGE AND OTHERS**

Date of Decision: 12 April 2010

Citation: 2010 LawSuit(SC) 1375

Hon'ble Judges: [Markandey Katju, A K Patnaik](#)

Eq. Citations: 2016 (6) SCC 277, 2016 (2) SCC(Cri) 549

Case Type: Civil Appeals

Case No: 766 of 2010

Subject: Criminal

Acts Referred:

[Code Of Criminal Procedure, 1973 Sec 156\(3\)](#)

Final Decision: Appeal allowed

Reference Cases:

[Cases Cited in \(+\): 66](#)

[Cases Referred in \(+\): 1](#)

Judgement Text:-

[1] Leave granted. These two appeals have been filed against the common impugned judgment of the High Court of Bombay dated 8-9-2009[Hemant Yashwant Dhage v. S.T. Mohite, 2009 SCC OnLine Bom 2251]. 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 para 9 of its order, changed the investigating officer and appointed a Special Investigating Officer to investigate into the alleged offence.

[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) 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. We have said this in [Sakiri Vasu v. State of U.P.](#), 2008 2 SCC 409 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) CrPC 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.

[4] In view of the settled position in [Sakiri Vasu v. State of U.P.](#), 2008 2 SCC 409 , the impugned judgment[Hemant Yashwant Dhage v. ST Mohite, 2009 SCC OnLine Bom 2251] of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a 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 Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.

[5] 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.