



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**Criminal Writ Petition No.828/2023**

1. VishwasShripadDeoskar,  
Age 60 years, Occ.-Retired Army officer,
2. Vijay GovindDeoskar,  
Having Pan No.Aaspad4898d, Age 80 years, occ.-Retired,
3. ShrinivasGovindDeoskar,  
Having Pan No.Avfpd0290h, Age 93 years, Occ.-Retired,  
All residents of "Govindam Apartments" At Plot No.97-A,  
Ram Nagar, Nagpur 440033. .... Petitioners

Versus

1. State of Maharashtra, through Secretary, Home Ministry,  
Mantralaya, Mumbai.
2. The Police Station Officer, Ambazari Police Station, Nagpur.
3. The Commissioner of Police, Civil Lines, Nagpur.
4. Sukhyog Constructions Pvt Ltd.,  
Having its office at Plot No.68-A Shivaji Nagar,  
Nagpur 440010. Acting through its Director  
Shri Mohan Prabhakar Deshpande, Aged about 54 years,  
Occ Business, R/o.68-A Shivajinagar, Nagpur.  
(A Company Registered and in the Business of Construction  
and Development of Real Estates) Police Station Ambazari.
5. Shri Mohan Prabhakar Deshpande  
(Director OfSukhyaog Construction Pvt Ltd)  
Occ-Business, R/o 68-A, Moulana Azad Road,  
Near LAD College, Nagpur 440010. Police Station Ambazari.
6. Ashish ShashikantPanse (Director of Sukhayaog Constriction Pvt Ltd)  
Occ.Business, R/o Plot No.303-B Swapnatrisha, near Ganesh  
Mandir, Laxminagar, Nagpur Mobile No.09011084408  
Police Station Bajaj Nagar.
7. MadhavDattatrya Deshpande. (Director of Sukhyaog Construction  
Pvt Ltd) Occ.-Business, R/o Plot No.68, Kalpana,

Shivaji Nagar, Nagpur, Mobile No.9011084410  
Police Station Ambazari.

8. ShivnarayanGorai (Director OfSuykhyaog Construction Pvt Ltd),  
R/o 204, Vrundavan Apartment, WHC Road,  
Laxmi Nagar, Nagpur. Mobile No.9822225135  
Police Station Bajaj Nagar.
9. Yavatmal Urban Cooperative Bank Ltd  
through its Chairman, ABC Plaza, Deonagar Square, Nagpur  
440022, Police Station Bajaj Nagar.
10. Ajay VitthaldasjiMundhada,  
PresidentOf Yawatmal Urban Cooperative Bank,  
Mobile No.9422867033.
11. Dr. Shri Nitin TukaramKharche,  
Vice President Of Yawatmal Urban Cooperative Bank, Mobile  
No.9422892768.
12. Ashish HariharraoUttarwar,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9767996655.
13. Prashant ArunMadhamshettywar,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9823975570
14. Sanjay ChintamanraoDehankar,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9623750255.
15. PamodMadhukarraoDhurve,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9422165134.
16. Adv PrafullsinghLaxmansingh Chauhan Director Of Yawatmal  
Urban Cooperative Bank, Mobile No.9422866184.
17. Govardhan DayaramRathod,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9422569852.
18. ParimalPremkumar Deshpande, Director Of Yawatmal Urban  
Cooperative Bank, Mobile No.9423131156.

19. Dr. MaheshDamodharSarolkar,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9422119282.
20. AjindersighManoharsingh Chawla, Director Of Yawatmal Urban  
Cooperative Bank, Mobile No.9325550551.
21. Vasanta Ramji Supare,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9850714400.
22. Santosh VishnukantPenshanwar,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.7517444044.
23. Mrs. Mira Rajesh Ghate,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9960758134.
24. ShilaRajeshwarNiwal,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9403363382.
25. Pravin PandurangKhandve, Expert Director Of Yawatmal Urban  
Cooperative Bank, Mobile No.8805777999.
26. PiyushKailaschandraKhetan,  
Expert Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.9404542550.
27. SuydhakarGanpatrao Deshattiwar,  
Director Of Yawatmal Urban Cooperative Bank, Mobile  
No.7510616700/9423681161.

Respondent no.10 to 27through Yawatmal Urban  
Cooperative Bank Ltd. through its Chairman, ABC Plaza,  
Deonagar Square, Nagpur 440022.  
Police Station Bajaj Nagar.

.... Respondents.

Mr. T.D. Mandlekar, Advocate for petitioners.

Mr. N. Joshi, APP for resp. no.1 to 3.

Mr. U.M. Aurangabadkar, Advocate for resp. nos.4 to 7.

Mr. A.S. Deshpande, Advocate for resp. no.9.

Mr. A.H. Lohiya, Advocate for resp. no.10

**CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ**

Closed for orders on : 26-06-2024.

Pronouncement of judgment on : 20-07-2024.

**J u d g m e n t** (Per Smt. Vibha Kankanwadi, J.)

. The petitioners by invoking the Constitutional powers of this Court under Article 226 of the Constitution of India read with inherent powers under Section 482 of the Code of Criminal Procedure ("Cr.P.C.", for short), are seeking directions against respondent nos.2 and 3 to investigate the complaints filed by the petitioners and register the FIR under Section 154 of the Cr.P.C. Further they are seeking directions against the Commissioner of Police, Nagpur to initiate departmental action against respondent no.2 for the willful disobedience of the directions issued by the Hon'ble Supreme Court of India in *Lalita Kumari vs State of UP*, reported in *2014 (2) SCC 1*. The directions are also sought against the Commissioner of Police to start a separate cell of investigation in the matters pertaining to Real Estate frauds and complaints against the builders, and further directions to start the process of performance audit of every Police Station Officer in the State of Maharashtra on the touchstone of the principles of Lalita Kumari (supra).

2. Heard learned Advocate for the petitioners, learned APP for the State and learned Advocates for the respondents.

3. Learned Advocate for the petitioners after giving the facts of the case submitted that respondent nos. 2 to 8 have played a big fraud in connivance with respondent nos.9 to 27 and have tried to dispossess the petitioners from their respective homes by illegally mortgaging their residential property without any authority. It has been stated that the Mortgage Deeds were executed without the consent of the petitioners. There is mis-use of the Power of Attorney granted to those respondents by the petitioners. Therefore, the petitioners had given written complaint on 29-09-2023 to Police Station Ambazari, Nagpur. Perusal of the said complaint would disclose that the offences those were transpiring were under Sections 120-B, 199, 203, 207, 406, 417, 418, 420, 422, 426, 467, 468, 471 r/w section 34 of the Indian Penal Code ("IPC", for short). As the cognizable offence was transpiring, it was mandatory on the part of the said Police Station Officer to register the FIR and start with the investigation. Learned Advocate for the petitioners has heavily relied on Lalita Kumari (supra), wherein it is unequivocally made clear by the Constitutional Bench of the Hon'ble Supreme Court that it is mandatory to register an FIR on the receipt of information disclosing a cognizable offence. Learned Advocate for the petitioners submits that, no doubt in Lalita Kumari (supra) it is stated that preliminary enquiry is permissible in certain cases, but that period should be not more than 07 days. Here till today, on the basis of the said

written complaint, FIR under Section 154 of the Cr.P.C. has not been registered. The petitioners had no option but to approach this Court. It is further submitted that in the reply on behalf of respondent no.2 i.e. the Police Station Officer, Ambazari, Nagpur, it is stated that in view of the said written complaint the accused persons were called during preliminary enquiry. The preliminary enquiry was attended by son of petitioner no.3 and he made statement on behalf of himself and father as his father was 93 years old and unable to attend that the matter is settled. Further statement of Mohan Deshpande, Director of Sukhyaog Contractions Pvt. Limited was also recorded on 14-04-2023. Son of petitioner no.3 along with officials of Yawatmal Urban Cooperative Bank came for preliminary enquiry and stated that the matter is settled on condition that the mortgage flat nos.202, 302, 502 of Govindam Apartment would be released from the mortgage by taking mortgage of ultimate property. In view of those statements, the FIR has not been registered. Learned Advocate for the petitioners submits that this statement/say cannot be accepted as the petitioners themselves were not called. The preliminary enquiry could not have been more than the period that has been granted under Lalita Kumari (supra). Further, as per Lalita Kumari (supra), when the Police Officers are not doing their duty, then such erring officers will have to be taken to task.

4. Learned APP on the basis of the affidavit on behalf of the Police Officer Ambazari submits that when fact had come on record that there is a compromise, the Police were under impression that the purpose is served and therefore they have not registered the offence. There was no *malafide* intention on their part.

5. Learned Advocates for the respondents have vehemently submitted that when the petitioners have the option of approaching Magistrate under Section 156(3) of Cr.P.C. or they could have approached the higher authority as stated in Lalita Kumari (supra) itself, then the writ for direction to register the FIR cannot be issued.

6. Learned APP relies on the decision of this Court in *Smt. Jwala Jambuvantrao Dhote vs Commissioner of Police, Sadar, Nagpur* and companion matter (Criminal Writ Petition No.527/2022 decided on 22-08-2022 Coram-Manish Pitale and G.A. Sanap, JJ), wherein has been held that -

*"13. We are of the opinion that applying the said position of law to the facts of the present cases, reference to Section 157 of Cr.P.C. in the body of the writ petitions and in prayer clauses thereof, is only an attempt on the part of the petitioners to invoke writ jurisdiction, inter alia, on the ground that no remedy is available to the petitioners as contemplated under*

*Section 156(3) of Cr.P.C. We are not in agreement with the petitioners on that score."*

7. Learned Advocate Mr. Despande for respondent no.9, relies on the decision of this Court in *Shahnawas Khan Ismail Khan vs Commissioner of Police, Nagpur* reported in *AIR OnLine 2021 Bom 1255*, wherein it was held that 'when the allegations by themselves do not *prima facie* constitute cognizable offences and the dispute is in respect civil matter, it would be better for the aggrieved person to avail of alternate remedy which could be more effective. Such remedy would be available in law under Section 190 r/w 200 of the Cr.P.C.'

He also relies on the decision of Single Bench of Madhya Pradesh High Court in *Bhura @ Mataru Samad vs The of Madhya Pradesh and others* (Misc. Criminal Case No.8712/2024), wherein also similar view has been taken. He further relies on the decision in *Sudhir Bhaskarrao Tambe vs Hemant Yashwant Dhage and others*, reported in *(2016) 6 SCC 277*, wherein it has been observed on the basis of *Sakiri Vasu vs State of U.P.*, reported in *(2008) 2 SCC 409* that-

*"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 alternate his remedy to approach the Magistrate concerned under*



*Section 156(3) 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."*

8. As it can be seen that the main grievance of the petitioners is that on the basis of their written complaint when the cognizable offence was transpiring, the FIR under Section 154 of the Cr.P.C. was not registered. Though the petitioners have relied on Lalita Kumari (supra), in the said decision itself the preliminary enquiry was made permissible. Of course, it was a time bound preliminary enquiry that was contemplated. Here the written complaint was made on 29-03-2023, and it appears that son of petitioner no.3 had gone for statement. How and under which circumstances the enquiry was conducted cannot be gone into, but certainly there appears to be delay in the enquiry. On 14-04-2023, statement appears to have been taken and the Police were given a picture that the matter is compromised, and therefore further action was not taken. Now, there is one more complaint which appears to have been given on 09-08-2023; which was received by the police Station on the same date, which refers to earlier Police complaint dated 29-03-2023 and statement of said Avinash on 04-04-2023. If we consider the original complaint dated 29-03-2023, it only states that behind the back of the petitioners, respondent nos. 4 to 8 have illegally mortgaged the property belonging to the petitioners. According to them,

the Power of Attorney executed by them has been misused. When the fact is coming forward that there are certain documents which were executed by the petitioners in favour of those respondents, then there is definitely a civil angle to the complaint.

9. Even if we consider that both the complaints are disclosing cognizable offence yet, the petitioners have not explained as to why they had not undertaken the alternate remedy of approaching the Magistrate under Section 156(3) of Cr.P.C. The decision in Sakiri Vasu (supra) as well as *Aleque Padamasee and others vs Union of India and others*, reported in *(2007) 6 SCC 171*, would be applicable. In para 34 of Lalita Kumari (supra), the decision in *Aleque Padamasee* (supra) has been referred and it is observed after noting that 'in case the Police officials failed to do so, the modalities to be adopted are as set out in Section 190 r/w Section 200 of Cr.P.C., it is observed that as such the court itself provides several checks for refusal on the part of the Police authorities under Section 154 of the Cr.P.C.' We cannot say that to that extent then the decision in *Aleque Padamasee* (supra) was overruled in Lalita Kumari (supra). Further, in view of the decision in Sudhir Tambe (supra) and other decisions of this Court, we are of the opinion that directions cannot be given under the writ jurisdiction of this Court to the police Authorities to register the FIR on the basis of the written

complaints filed by the petitioners before the Police. The petitioners would be at liberty to exhaust the said remedy. In view of the said fact that, unless it is shown that there was willful neglect on the part of the police authorities, action could not be initiated against them on the basis of observations in Lalita Kumari (supra). We say that since preliminary enquiry has been made and an impression has been given to the Police that the matter is settled, we do not find that there is willful neglect, and therefore there is absolutely no necessity to direct the Police Commissioner to initiate departmental action against respondent no.2. Further we would say that this is not a Public Interest Litigation to consider prayer clauses (iii) and (iv), and therefore for the aforesaid reasons, we do not find any merit in the present petition. It deserves to be dismissed. Accordingly, it is dismissed.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)