

IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Writ Petition No. 4 of 2015.

SHRI DEVENDRA MANGUESH NAIK
Son of Manguesh P. Naik,
aged 37 years, married,
business, Indian National,
r/at H.No.589, St. Francis
Vaddo, Colvale, Bardez, Goa.

Petitioner

Versus

POLICE INSPECTOR,
Mapusa Town Police
Station, Mapusa, Goa.

. Respondent.

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Mr. Shivan Desai, Advocate for the petitioner.
Mr. D. Lawande, Additional Public Prosecutor for the
respondent.

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Coram: F. M. REIS &
K. L. WADANE, JJ
Date : 25/08/2015.

ORAL JUDGMENT (Per K. L. Wadane, J) :

1. The present petition is filed by the petitioner seeking direction to quash and set aside F.I.R. No.82/1998 registered with the respondent.

2. On 24.3.1998, a complaint is filed by one Mr. A.G. Haldankar in respect of an accident at Peddem, Maupsa at Mapusa Police Station. The petitioner was called at Mapusa

Police Station and informed about the complaint wherein the petitioner was purportedly implicated.

3. The petitioner visited Mapusa Police Station and he was informed that necessary intimation was given to him of further proceedings in respect of the said complaint.

4. In the year 2011, the petitioner applied for Batch of Heavy Vehicle and Taxi. The said application was forwarded to Mapusa Police Station for verification and clearance by the Police.

5. Upon inquiry, the petitioner was informed that the record reveals that a case was pending against him. The petitioner was shocked to note that FIR bearing No.82/1998 was registered dated 24.3.1998 and in pursuance to the said FIR, a Criminal Case No.206/1998/1/Addl. was registered in the Court of Judicial Magistrate First Class, Mapusa. Subsequently, the petitioner took necessary steps for procuring the records of the Criminal Case No.206/98/1/Addl. Upon inquiry, the petitioner was informed that the proceedings of a Criminal Case no.206/1998/1/Addl. was disposed of by the judgment and order dated 08.01.2002. The petitioner then applied for certified copy of the judgment and order and

surprisingly, he came to know that the Criminal Case no.206/1998/1/Addl. was filed against some other persons and not against the petitioner.

6. On 23.9.2011, in pursuance to the application of the petitioner, the Public Information Officer of the Superintendent of Police furnished necessary information to the petitioner, which included a copy of the F.I.R. In the said letter, the petitioner was informed that case papers of the crime are not available at Mapusa Police Station and that the same were taken by the Investigating Officer-Mr. A. G. Haldankar, who had since expired. The petitioner further sought information from which it reveals that there was an error committed by the said Mr. A.G. Haldankar wherein wrong criminal case was attributed to F.I.R. No.82/1998 whilst further stated that the said Criminal Case No.206/1998 pertains to the Crime no.77/1998 and not Crime no. 82/1998. It was further stated that no case papers were available pertains to the said Crime number and that although the serial number of the charge-sheet is reflected, no charge-sheet has been filed in the Court.

7. The petitioner, by his letter/representation dated 10.12.2012 addressed to the Director General of Police

mentioning therein the facts noted above requested him to strike off the petitioner's name from the criminal record and issue Police Clearance Certificate.

8. The petitioner made constant inquiries with the respondent about the status of closure of the case. The petitioner repeatedly assured that the necessary steps towards closure of the case against the petitioner have been taken and no further impediments were caused in respect of the Police Clearance.

9. In the year 2014, the petitioner applied for the post of "Driver Operator" in the office of the Director of Fire and Emergency Services. He applied for physical efficiency test and was subsequently informed that he has cleared the same. The petitioner appeared for written examination and awaiting selection of oral interview.

10. On the above background, the petitioner has prayed to quash and set aside the F.I.R., as it is being hurdle to his employment.

11. We have heard the arguments of Mr. Shivan Desai, the learned counsel appearing for the petitioner and Mr. D.

Lawande, the learned Additional Public Prosecutor appearing for the respondent.

12. From the facts set out in the petition, it reveals that the First Information Report regarding the alleged offence of the accident punishable under Sections 279 and 337 of the Indian Penal Code took place on 24.3.1998 almost about 17 years. It is not disputed that the complainant, who lodged the First Information Report, namely Mr. Haldankar died. Further, it has come on record that the papers regarding first information report no.182/1992 are not traceable which goes to show that the offence pending against the petitioner since last 17 years without any progress. Further more, the first informant or the Investigating Officer of the said crime is no more. In such circumstances, there is absolutely no progress after registration of the Crime and this is an hanging sword upon the petitioner which he carried for about 17 years and lastly he filed this writ petition to quash and set aside first information report.

13. Article 21 of the Constitution of India gives right to speed trial. Therefore, Mr. Shivan Desai, the learned counsel appearing for the petitioner, has relied upon the judgment of the Hon'ble Supreme Court in the case of **(2008) 15 SCC**

117. Thus, the Apex Court has observed in paragraph nos. 22 and 23, which reads thus:

"22. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases.

23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial".

14. We have gone through the facts and observations of the above cited authority. The observations of the above cited judgment are perfectly applicable to the facts of the present case.

15. The continuation of the criminal proceedings against the petitioner is of no use since the Police Authorities are unable to take further steps since last 17 years. In such circumstances and in view of the observations of the Apex Court, we are of the opinion that the First Information Report No.82/1998 registered for the offence punishable under

Sections 279 and 337 of the Indian Penal Code with the respondent is hereby quashed and set aside.

16. Rule is made absolute in terms of prayer clause (a) of the writ petition. There shall be no order as to costs.

K.L. WADANE, J

F.M. REIS, J.