

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 50 OF 2015

MR. INACIO CASMIRO FERNANDES.	... Petitioner
Versus	
MRS. CAROL FERNANDES.	... Respondent

Shri Shivan Desai, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 17th June, 2015

P.C:

By this petition, the petitioner who is the original complainant has challenged the judgment and order passed by the learned Sessions Judge, Panaji in Criminal Revision Application No. 56/2014 thereby confirming the order dated 28.01.2014 passed by the learned Judicial Magistrate First Class, Mapusa in Criminal Case No. 53/P/2012/D/F. By the said judgment, the learned Magistrate has dismissed the complaint filed by the petitioner alleging commission of offences under Sections 191, 192, 193, 196 and Section 209 of I.P.C. read with Section 8 of the Oaths Act, 1969.

2. The brief facts are that the petitioner and respondent are husband and wife. There is a dispute between them which has led the respondent-wife to file complaint under section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate First Class at Mapusa. The respondent had filed an affidavit in evidence in the said case. According to the petitioner,

the respondent has made certain false statements in paragraphs 10 and 24 of the said affidavit. In paragraph 10, the respondent has alleged that the petitioner had forced her to abort the pregnancy twice and has made some other allegations. In paragraph 24, the respondent has made a statement that the petitioner is having a current account with the ICICI Bank, Panaji and owning three vehicles. In short, according to the petitioner, these statements are false and thereby the respondent has committed offence as stated above. The learned Magistrate found that in the domestic violence case, the Court has relied upon the evidence of the respondent and the complaint filed by the respondent-wife was allowed on 24.09.2010, granting certain reliefs under Domestic Violence Act. It was further found that the Court which had decided the complaint under the Domestic Violence Act had not found that the statements made by the respondent were false. In such circumstances, the complaint came to be dismissed which has been confirmed by the learned Sessions Judge.

3. On hearing the learned Counsel for the petitioner and on perusal of the impugned judgment and order passed by the learned Magistrate and the learned Sessions Judge, it appears that the Courts below have rightly come to the conclusion that in the absence of the finding by the Court before which the affidavit was filed, about any of the allegations being false, a separate complaint could not have been filed. It is trite that the Court before which the alleged false

statements is made or fabricated evidence is produced can take action for giving false evidence. In the present case, the learned Magistrate seized of the domestic violence case has not found that the statements made by the respondent in the affidavit were false. In the circumstances, the complaint, at the instance of the petitioner, alleging that the statements were false, have been rightly not entertained. If such a course is allowed, it would lead to startling results. While one Court (before which the evidence is led) would accept and rely on the evidence, while the other Court of co-ordinate jurisdiction, would hold that the evidence is false. This cannot be countenanced. In such circumstances, I do not find any infirmity in the impugned order dismissing the complaint.

4. In the result, the criminal writ petition is dismissed.

C. V. BHADANG, J.

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