

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 60 OF 2014**

1. Smt. Sundarabai Govind Dhuri,
76 years of age,
widow of Govind Keshav Dhuri,
Resident of H.No.149-A,
Alto Torda, Porvorim,
Bardez Goa.
2. Shri Pradip Govind Dhuri,
53 years of age,
Son of late Govind Dhuri,
Resident of H.No.149-A,
Alto Torda, Porvorim,
Bardez Goa
3. Shri Sunil Govind Dhuri,
48 years of age,
Son of late Govind Dhuri,
Resident of H.No.UG-2,
Upper Ground, Darious Residency,
Behind Sea Breeze Hotel,
Caranzalem Goa. ... Petitioners

V e r s u s

1. The Investigation Officer,
Shri Vijaykumar S. Chodankar,
P.S.I. Panjim Police Station,
Panjim Goa.
2. Mr. Kashinath Shetye,
Major of age,
Son of Jairam Shetye,
Resident of Babino Building,
Alto Fondvem,
Ribandar Goa.
3. State
Through Public Prosecutor ... Respondents

Mr. A. D. Bhobe, Advocate for the petitioners.

Mr. D. Lawande, Additional Public Prosecutor for respondent nos. 1 and 3.

Mr. C. A. Ferreira, Advocate for respondent no.2.

**Coram:- F. M. REIS &
K. L. WADANE, JJ**

Judgment Reserved on : 8th June, 2015

Judgment Pronounced on : 5th August, 2015

J U D G M E N T (Per K. L. Wadane, J)

The present petition is filed by the petitioners/original accused nos. 1 to 3 under the provisions of Section 482 of the Criminal Procedure Code and prayed to quash and set aside the FIR and charge sheet submitted against them.

2. The brief facts of the case may be stated as follows :

The respondent no.2 herein filed a complaint dated 05.12.2009 alleging that on 02.12.2009 the respondent no.2 along with his two friends namely Advocate Ryan Menezes and Advocate Pravin Faldessai went to have tea at TATO restaurant at Panjim and the bill was around Rs.35/-. Therefore, the respondent no.2 paid cash of Rs.40/- consisting of four currency note of Rs.10/- each. After some time, the waiter returned a paper saying that it was Rs.5/- note to which the respondent no.2 shocked. On the basis of said contention, the respondent no.2

lodged a complaint with Panjim Police Station and requested for necessary action.

3. Respondent no.1 after conducting an inquiry was of the opinion that it is not a fit case to register an offence against the petitioners. Therefore, the respondent no.2 has approached to the Superintendent of Police requesting for registration of FIR. Thereafter, the respondent no.2 filed an application under the provisions of Section 156(3) of Criminal Procedure Code before the Judicial Magistrate First Class, Panaji, bearing Criminal Misc. Application No. 90/2010/D. The learned Magistrate allowed the said application and gave direction to the concerned Police Officer to register the FIR within 24 hours and file his report within 15 days.

4. Pursuant to the directions, the respondent no.1 registered the FIR bearing No. 132/2010 and has filed a final report under Section 173 of Criminal Procedure Code. The alleged offence committed by the petitioners/accused is stated to be punishable under Sections 489-E and 420 of Indian Penal Code. Being aggrieved with the registration of the crime and filing of the charge sheet the petitioners/accused persons have filed the present petition.

5. We have heard Mr. A. D. Bhobe, learned counsel appearing for the petitioners, Mr. D. Lawande, learned Additional Public Prosecutor appearing for respondent nos. 1 and 3, and Mr. C. A. Ferreira, learned counsel appearing for respondent no.2. We have also perused the record. On perusal of the same, it appears that the main grievance of the respondent no.2 is that he paid an amount of Rs.40/- consisting of four currency note of Rs.10/- each against the bill of tea to the extent of Rs.35/-. So instead of refund of Rs.5/-, the waiter from the hotel had given a paper having stamp of Rs.5/-, by which the respondent no.2 shocked and therefore, lodged a complaint with the concerned police station. During the course of the investigation, the statements of Advocate Ryan Menezes and Advocate Pravin Phaldessai, are recorded by the Investigating Officer, who have also stated that the complainant Kashinath Shetye, respondent no.2 told the said waiter that he did not want the coupon and want Rs.5/- back. Upon which the said waiter told him that the said coupon is only Rs.5/- and thereafter there was hot discussion on this issue. Thereafter, these two Advocates had gone outside the restaurant and after some time the respondent no.2 Mr. Kashinath Shetye came out of the hotel and told them that the said hotel staff has refused to give him a cash of Rs.5/- and had insisted him that he should take the coupon.

6. The xerox copy of the coupon is placed on record at page 77 of the petition from which it is seen that it is a blank paper on which the name of the hotel namely Cafe TATO is printed and below that words Panaji/Margao and below that Rs.5/- is printed. According to respondent no.2, this is a counterfeit currency note given by the staff of the hotel and therefore, the accused persons have committed offence punishable under Sections 489-E and 420 of Indian Penal Code. The provisions of Section 489-E of Indian Penal Code read thus :

[489E. Making or using documents resembling currency-notes or bank-notes.—

(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that

document it may, until the contrary is proved, be presumed that person caused the document to be made.]

The provisions of Section 420 of Indian Penal Code read thus :

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 28 of the Indian Penal Code reads thus :

"28. "Counterfeit.— A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised".

7. Sub-section (1) of Section 489E thus prohibits the use of any document resembling currency note or bank note. Sub-

section (2) deals with situation where the name of the accused appears on a document referred to in sub-section (1) and the accused refuses to disclose the name of the person by whom it was made. Sub-section (3) states the cases where the presumption is drawn against the person whose name appears on a document which is the subject matter of the fact.

8. On reading the said provisions, the main ingredient to constitute an offence in terms of the said provisions is that there should be element of deceiving the other person. In the present case, on going through the FIR, records as well as the report, the crucial element is found wanting.

9. Looking to the ingredients of the provisions of Sections 489-E and 420 of Indian Penal Code, we are of the opinion that the ingredients of the said offences are prima facie not established because on mere look at the coupon nobody can say that it is a counterfeit currency note or bank note. Mr. Bhobe, learned counsel appearing for the petitioners has argued that the allegations made in the complaint and taking into consideration the statements of the witnesses even being accepted on its face value no offence can be said to have been made out against the petitioners. Therefore, Mr. Bhobe, learned counsel appearing for the petitioners has relied upon the observation of the Apex Court

reported in **AIR 1998 SC 2796** in the case of **Ashok Chaturvedi and others V/s Shitul H. Chanchani and another**, has held at para 5 thus :

"5..... It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of Court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised.....".

10. By referring the above observation, Mr. Bhobe, learned counsel has requested this Court to invoke the jurisdiction of this Court under the provisions of Section 482 of Criminal Procedure Code and quash and set aside the charge sheet submitted against the petitioners.

11. As against this, Mr. C. A. Ferreira, learned counsel appearing for respondent no.2 has argued that inherent power of this Court under Section 482 of Criminal Procedure Code has to

be exercised very sparingly if the allegations made in the FIR disclose the commission of the offence. This Court shall not go beyond the same and pass order in favour of the accused. Looking to the rival contentions of both sides, we are of the opinion that even if the contents of the FIR are accepted as it is and on mere look of the coupon, at any stretch of imagination we do not think that the said coupon is a counterfeit currency note or bank note nor it is resemblance of currency note or imitation of currency note or valuable security. Therefore, prima facie no ingredients of offence punishable under Section 489-E of Indian Penal Code have been established. The petitioners/accused persons have also charged for the offence punishable under Section 420 of Indian Penal Code and nowhere in the record it is seen that there are allegations against the accused persons about the dishonest inducement to deliver such property. Looking to the above such circumstances, we are of the opinion that the ingredients of the alleged offence are not established even prima facie.

12. At the most, it can be said that the waiter or staff of the hotel adopted improper practice to refund the amount. Further, it is material to note that there is no evidence/material on record to show that the accused persons have prepared the so called coupon and they were present at the hotel when the

alleged offence took place. From the record, it is seen that the accused persons are doing their business in partnership and even assuming that the coupon is a counterfeit valuable security, still there is no further evidence on record to show that the accused persons have prepared and gave it to the complainant/respondent no.2.

13. Mr. Ferreira, learned counsel appearing for respondent no.2 has relied upon unreported judgment of the Apex Court in **Criminal Appeal No. 1168 of 2014** in the case of **Mosiruddin Munshi V/s Md. Siraj and another** in which the principles laid down by the Hon'ble Apex Court in the case reported in **(2009) 1 SCC 516** have been mentioned which are as follows :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

14. The aforesaid observations are applicable to the facts of the case, in which on the face of record and its entirety disclose a non cognizable offence. In the present case, even accepting the statement of the complainant and the statements of other witnesses, we do not think that the ingredients of the offence are prima facie established. Mr. Ferreira, learned counsel further relied upon the observation in the following cases i.e. **(2011) 1 SCC 74** in the case of **Iridium India Telecom Limited V/s Motorola Incorporation and others** and **(2010) 11 SCC 226** in the case of **State of Andhra Pradesh V/s Gourishetty Mahesh and others**. We have gone through the observations of the above authorities which are inapplicable to the facts of the present case simply because the entire material placed on record

is not sufficient to constitute an offence even prima facie. It is now well settled that the Court must ensure that the criminal prosecution is not used as an instrument of harassment for seeking private vendetta or with an ulterior motive to pressurise the accused. It is also well settled that it is neither possible nor desirable to lay down any inflexible rule that would govern the exercise of inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code though it has to be used carefully and with caution and only when it is justified in the facts and circumstances of the case.

15. In view of the above, we are of the opinion that none of the offences for which the petitioners are summoned are made out from the complaint and the material on record. In fact, even the complaint did not disclose any ingredient of committing offence under Section 420 of the Indian Penal Code. We further find that the proceedings are nothing but an abuse of process of law on the part of the complainant/respondent no.2 to implicate the petitioners in a criminal case. As such, we allow the petition and quash and set aside the order dated 15.04.2010 passed in Criminal Misc. Application No. 90/2010/D, FIR bearing No. 132/2010 registered at Panjim Police Station and criminal proceedings bearing Criminal Case No. IPC/179/2012/B pending before the Judicial Magistrate First Class, 'B' Court, Panaji. Rule

is made absolute in above terms. The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

at*