

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Writ Petition No. 62/2015

1. Mr. Niaz Ahamad,
Son of Abdul Rahim Shah Mujawar,
aged 41 years, married, Indian National,
Presently employed in Gulf,
Permanent resident of H. No.1385,
Fariza Manzil, Madel,
Tivim, Bardez, Goa.

2. Mrs. Shahin Shah,
Wife of Mr. Niaz Ahamad
33 years of age, Indian National,
residing at House No. 1385.
Fariza Manzil, Madel,
Tivim, Bardez, Goa.

3. Miss. Reshma Bi,
daughter of Abdul Rahim Xa Muzavor,
42 years of age, Indian National,
residing at House No.1385,
Fariza Manzil, Madel,
Tivim, Bardez, Goa.

.. Petitioners

Versus

- 1] State of Goa,
Through Police Inspector
Mapusa Police Station,
Mapusa, Goa
(Represented through Public Prosecutor)

- 2] Mrs. Naznin Shah
Wife of Mr. Usman Naveed Shah Muzavar,
28 years, housewife,
Presently residing at H.No.146/C,
Abdulla Manzil, Fatima Colony,
Alto Dabolim, Bogmalo Road,
Vasco da Gama, Goa403 801.

Respondents

Mr. Agha Iftikhar, Advocate for the petitioner.

Mr. M. Amonkar, Additional Public Prosecutor for the respondent no.1.

Mr. A.Naik, Advocate for the respondent no.2.

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CORAM : F.M.REIS & K.L. WADANE, JJ.

Date : 7th July, 2015.

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

1] Heard Mr. Agha Iftikhar, learned Advocate for the petitioner, Mr. M. Amonkar, learned Additional Public Prosecutor for the respondent no.1 and none present for the respondent no.2.

2] Rule. Rule made returnable forthwith. Heard by the consent of the parties. The learned Advocates appearing for the respective respondents waive notice on behalf of the respondents.

3] This petition is filed by the petitioners (the original accused nos. 1 to 3) to quash and set aside the First Information Report No.129/2015 dated 24.4.2015 registered in Mapusa Police Station.

4] The brief facts of the case may be stated as follows:-

The respondent no.2 (the original complainant) lodged a complaint to the Police Station, Mapusa on 24.4.2015 stating that she married with one Usman Naved Shah Muzawar in the year 2010 and presently working in Kuwait. The petitioner no.1 is his brother; the

petitioner no.2 is the wife of petitioner no.1 and the petitioner no.3 is the sister of petitioner no.2.

5] Due to the continuous harassment over the demand of dowry, the complainant was forced to leave the house of her husband and is residing at her parents' place. She filed a proceeding under the Domestic Violence Act, which is pending before the Judicial Magistrate First Class, Vasco. The dispute between the complainant and her husband and in-laws were going on and it is not settled up-till-now.

6] On 23.4.2015 the complainant came to know about her husband Usman had come down to Goa and staying with his family at House no.1385, Fariza Manzil, Madel, Thivim, Bardez, Goa. So, the complainant along with her brother Shaikh Abdul went to Mapusa Police Station to call her husband and thereafter at about 17.13 hours the complainant along with her brother went to the residence at house no 1385, Fariza Manzil, Madel, Thivim, Bardez, Goa.

7] At about 18.00 hours, the complainant knocked the door. When the petitioner no.1 opened the door, the complainant entered the house. At that time, the petitioner no.1 asked “as to why she came”.

Thereupon, she told the purpose of her visit to look her husband. Then the petitioner no.1 started to abuse her in filthy words.

8] It is further alleged that when the complainant was requesting the petitioner no.1 to allow her to take search of her husband. At that time, all the petitioners intentionally hold her hand, dragged her, pushed her physically and assaulted her. They pulled her scalp hairs causing her painful injuries. When the brother of the complainant came forward to rescue, at that time, all the petitioners have abused and threatened to involve in a criminal case. On the basis of the First Information Report, P.S.O. registered the offence at Crime no.129/2015 for the offences punishable under Sections 504, 506, 323, 509, 354 and 354-A read with Section 34 of the Indian Penal Code.

9] We have heard the arguments of Mr. Agha Iftikhar, the learned Advocate for the petitioner, Mr. Amonkar, the learned Additional Public Prosecutor for the respondent no.1 and none present for respondent no.2.

10] We have perused the documents available on record. On perusal of the same, coupled with the contents of the First Information Report, it is seen that there is litigation between the complainant and

her husband under the provisions of Domestic Violence Act and the same is pending. Further more, from the contents of the First Information Report, it appears that the allegations regarding assault by each of the petitioners is vague and no particulars are given regarding the particular act committed by the particular accused. Further more, the complainant has made a serious allegation of outraging her modesty in a public view. However, there is no whisper in the First Information Report about the act done by each of the accused that too in reference to outraging of her modesty.

11] From the contents of the First Information Report it appears that it was not promptly lodged and there is delay of about 24 hours and it was lodged after legal consultation.

12] We have gone through the reply submitted by the Investigating Officer from which it is seen that the Investigating Officer during the investigation has recorded the statement of some witnesses particularly, the statement of one Mr. Mehboob Nishandai, who is mechanic. In his statement, he has stated that on 23.4.2015 said Niaz Shah-petitioner no.1 was present at his in-laws place at Keri Sattari, Goa. The same is the statement of the another witness Niaz Shah. Besides these statements, some of the other witnesses have

given their affidavits stating that the petitioner no.1 was present at Keri Sattari, Goa on 24th April, 2015 from 4.00 p.m. to 24th April, 2015 till 11.00 a.m. Besides the above aspects, during the course of argument Mr. Amonkar, the learned Additional Public Prosecutor has made statement that during the investigation it was revealed that the accused persons were not present at the house of the petitioner no.1 at the time of alleged incident. Accepting the statement of Mr. Amonkar, the learned Additional Public Prosecutor, we find it appropriate to quash and set aside the F.I.R. No.128.2015 for the offences punishable under Sections 504, 506, 323, 509, 354, 354-A read with Section 34 of the Indian Penal Code registered at Police Station, Mapusa. Hence, we pass the following order:-

Order

- (i) Criminal Writ Petition No. 62/2015 is allowed.
- (ii) F.I.R. No.129/2015 dated 24.4.2015 lodged at the Mapusa Police Station, Goa is hereby quashed and set aside.
- (iii) Rule is made absolute in the aforesaid terms.

K.L.WADANE, J

F.M. REIS, J

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