

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITIONS NO.76, 88 to 96 of 2011
CRIMINAL WRIT PETITION NO.76 OF 2011

Rajeev Verma,
Major of age,
Son of late Shri S.S. Verma,
r/o 322-North Civil Line,
Muzaffar Nagar,
U.P. 251001.
Presently residing at
Raj Bhawan, Goa.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.
2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.
3. Mr. Pradip Kakodkar,
Major of age, Curchorem-Goa.
4. Police Inspector,
Mapusa Police Station,
Mapusa-Goa.
5. Superintendent of Police,
North Goa, Porvorim,
Bardez, Goa.

.... Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent Nos. 4 & 5.

Respondent No.1, in person – absent.

WITH

CRIMINAL WRIT PETITION NO.88 OF 2011

Deu Subha Banavalikar
56 years of age,
Son of Subha Banaulikar,
r/o. House No.1681, Porvorim, Goa,
Presently working as Sub-Divisional
Police Officer, Panaji Sub-Division,
Panaji-Goa.

.... Petitioner

V/s

1. Mr. Sudip N. Tamankar,
Major of age, R/o. House No.582,
Gaulembhat, Chimbhel, Ilhas Goa.
2. Police Inspector,
Panjim Police Station,
Mapusa-Goa.
5. Superintendent of Police,
North Goa, Porvorim,
Bardez, Goa.

.... Respondents

Shri A.D. Bhohe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent Nos. 2 & 3.

Respondent No.1, in person – absent.

WITH
CRIMINAL WRIT PETITION NO.89 OF 2011

Vishwesh Paramanand Karpe
36 years of age,
Son of Paramanand Karpe
r/o. Pushpanjali Bldg.,
Vasco-Goa.
Presently working as
Police Inspector,
Agassaim Police Station,
Agassaim-Goa.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.
2. Police Inspector,
Panjim Police Station,
Mapusa-Goa.
5. Superintendent of Police,
North Goa, Porvorim,
Bardez, Goa.

.... Respondents

Shri A.D. Bhohe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent Nos. 2 & 3.

Respondent No.1, in person – absent.

**WITH
CRIMINAL WRIT PETITION NO.90 OF 2011**

1. The Goa State Election Commission,
Through its Secretary,
Having its office at Altinho,
Panaji, Goa.
2. Dr. M. Modassir,
State Election Commissioner,
Goa State, Altinho,
Panaji, Goa.

.... Petitioners

V/s

1. State,
Through the Police Inspector
& Police Station Incharge,
Anti Corruption Bureau,
Directorate of Vigilance,
Panaji, Goa.

2. Shri Kashinath Shetye,
Aged 43 years, r/o. Babino Building,
Alto Fondvem, Ribander-Goa.

.... Respondents

Shri S.N. Joshi, Advocate for the Petitioners.

Shri S.R. Rivankar, Public Prosecutor for Respondent No. 1.

Respondent no.2 in person – absent.

**WITH
CRIMINAL WRIT PETITION NO.91 OF 2011**

Rajnanda Desai,
Major of age,
wife of Dr. Arun Desai,
R/o. Baina, Vasco-Goa,
Presently working as
Director of Health Services,
Panaji-Goa.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.
2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.
3. Mr. Pradip Kakodkar,
Major of age, Curchorem-Goa.
4. Police Inspector,
Mapusa Police Station,
Mapusa-Goa.
5. Superintendent of Police,
North Goa, Porvorim,
Bardez, Goa.

.... Respondents

Shri A.D. Bhole, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent Nos. 4 & 5.

Respondent Nos. 1,2 & 3 in person – absent.

**WITH
CRIMINAL WRIT PETITION NO.92 OF 2011**

Mr. Anupam Kishore
40 years of age,
son of Dr. J.K. Verma,
r/o. Flat 201, Sobh Shree Apartments,
Patel Path, Seikhpura, Patna – 800 014,
Presently residing at flat – 806,
RBI Officers Flats, Tata Mills Compound,
Parel, Mumbai-400014.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.

2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.

3. State,
Through Police Inspector,
Panaji Police Station, Panjim-Goa.

.... Respondents

Shri A.D. Bhole, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent No.3.

Respondent Nos. 1 & 2 in person – absent.

**WITH
CRIMINAL WRIT PETITION NO.93 OF 2011**

Mr. Morad Ahmad,
60 years of age,
Son of late Shafi Ahmad,
H.No.16-761-2, Amral Waddo,
Taleigao, Tiswadi, Goa.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.

2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.

3. State,
Through Police Inspector,
Panaji Police Station, Panjim-Goa.

.... Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent No. 3.

Respondent Nos.1 & 2 in person – absent.

**WITH
CRIMINAL WRIT PETITION NO.94 OF 2011**

Mr. K. Ashok Kumar,
41 years of age,
Son of K. Venkateshwar Rao,
R/o. Bldg. No.5, Flat no.5/S-2,
Model Exotica, St. Inez, Panaji-Goa.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.
2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.
3. State,
Through Police Inspector,
Panaji Police Station, Panjim-Goa. Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent No. 3.

Respondent Nos.1 & 2 in person – absent.

**WITH
CRIMINAL WRIT PETITION NO.95 OF 2011**

Mr. Anupam Kishore
40 years of age,
son of Dr. J.K. Verma,
r/o. Flat 201, Sobh Shree Apartments,
Patel Path, Seikhpura, Patna – 800 014,
Presently residing at flat – 806,
RBI Officers Flats, Tata Mills Compound,
Parel, Mumbai-400014. Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.
2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.
3. Mr. Pradip Kakodkar,
Major of age, Curchorem-Goa.

4. Police Inspector,
Mapusa Police Station,
Mapusa-Goa.

5. Superintendent of Police,
North Goa, Porvorim,
Bardez, Goa.

.... Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondents No.4 & 5.

Respondents No.1,2 & 3 in person – absent.

**AND
CRIMINAL WRIT PETITION NO.96 OF 2011**

Mr. Mohan V. Sakenavar,
55 years of age,
Son of Vannurappa Sakenavar,
H.No.264/14, "Deepika",
Green Valley, Alto-Porvorim, Goa.

.... Petitioner

V/s

1. Mr. Kashinath Shetye,
major of age, Babino Building,
Alto Fondvem, Ribandar-Goa.

2. Mr. Ketan S. Govekar,
Major of age, Wadji Building,
St. Inez, Panaji-Goa.

3. State,
Through Police Inspector,
Panaji Police Station, Panjim-Goa.

.... Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for Respondent No.3.

Respondents no.1 & 2 in person – absent.

**CORAM : F.M. REIS &
C.V. BHADANG, JJ.**

DATE : 5th OCTOBER, 2015

JUDGMENT : (Per C.V. BHADANG, J.)

All these petitions involve common and connected questions, both of law and facts. As such, they are being disposed of by this common judgment.

2. In all these petitions, the challenge is to the order passed by the learned Judicial Magistrate First Class under Section 156(3) of Criminal Procedure Code, issuing a direction to register a FIR. It would be worthwhile to reproduce the facts in brief, in each of the petitions.

CRIMINAL WRIT PETITION NO. 88/2011

3. The petition arises out of the order dated 23.08.2011 passed by the learned Magistrate in Criminal Miscellaneous Application No. 145/2011/D.

4. The petitioner was at the relevant time holding the post of Sub-Divisional Police Officer at Panaji, Sub-Division. The first respondent addressed a complaint to the second

respondent stating that the petitioner had wrongly stated his age on the basis of a false and fabricated birth certificate. The first respondent had sought for registration of an FIR under Section 13 of the Prevention of Corruption Act and under Sections 465 to 471 and 417 to 420 of IPC. As the complaint did not evoke a favourable response the first respondent approached the learned Judicial Magistrate First Class at Panaji in Criminal Misc. Application No.145/2011/D. The learned Magistrate by an order dated 23/08/2011 has directed investigation into the allegations in the complaint and to register FIR within 24 hours of the receipt of the order.

CRIMINAL WRIT PETITION NO. 89/2011

5. The petition arises out of the order dated 23.08.2011 passed by the learned Magistrate in Criminal Miscellaneous Application No. 140/2011/D.

6. The petitioner is working as a Police Inspector. The first respondent by communications dated 21/07/2011 and 29/07/2011 addressed to the second respondent had alleged that the petitioner had forged documents showing it to be genuine, in order to cheat the first respondent. It was also

alleged that the petitioner has amassed wealth disproportionate to his known sources of income. The first respondent sought registration of an FIR under Section 13(1)(c), 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act read with Sections 420, 468, 120(B) and 34 of Indian Penal Code. As no FIR was registered, the first respondent approached the learned Judicial Magistrate First Class, Panaji in Criminal Misc. Application No.140/2011/D under Section 156(3) of Cr.P.C.. The learned Magistrate by the impugned order dated 23/08/2011 had directed the second respondent to register an FIR within 24 hours of the receipt of the order.

CRIMINAL WRIT PETITION NO. 90/2011

7. The petition arises out of the order dated 23.08.2011 passed by the learned Magistrate in Criminal Miscellaneous Application No. 139/2011/D.

8. The second respondent filed a complaint with the Anti-corruption Bureau on 29/07/2011 alleging corruption, conspiracy, forgery and cheating against the petitioner no.2 Dr. M. Modassir working as a State Election Commissioner. It was alleged that the petitioner no.2 had earlier asked for voluntary

retirement and subsequent to that was appointed as a State Election Commissioner. It was alleged that the election notification of CCP elections was issued duly signed by petitioner no.2 from Lucknow showing it to be signed from Panaji on 14/02/2011. He was sanctioned leave from 7/02/2011 to 18/02/2011 and was at Aligarh (U.P.). It was next alleged that when the complainant was sitting with Shri Hawaldar in the office of the Director of Municipal Administration, in connection with a RTI case, around first week of February, 2011, the petitioner no.2 called Shri Hawaldar at the residence of Shri Atanasio Monserrate, the then Education Minister in charge of the Congress Panel for City Corporation Panaji Elections. Shri Hawaldar refused to oblige saying that it was inappropriate for him as also petitioner no.2 to visit the residence of the Minister at the time of the Municipal elections. It was alleged that the petitioner no.2 has committed offence under Sections 409, 420, 468, 471, 120(B) and 34 of IPC. As the complaint did not evoke a favourable response, the respondent no.2 approached the learned Magistrate under Section 156(3) of Cr.P.C. in Criminal Misc. Application No.139/2011/D. The learned Magistrate by an order dated 23/08/2011 had directed the Police Inspector, ACB to "investigate into the allegations in the complaint and register

the FIR within 24 hours of the receipt of the order”.

CRIMINAL WRIT PETITION NOS. 92, 93, 94 and 96/2011

9. These petitions arise out of the order dated 26.07.2011 passed by the learned Magistrate in Criminal Miscellaneous Application No. 127/2011/C.

10. The petitioner Anupam Kishore in Criminal Writ Petition No. 92/2011 is a 1996 Batch, RBI Cadre Officer and has worked at various posts in different centres including Kolkata, Patna and was on deputation with Government of Goa.

The petitioner in Criminal Writ Petition No. 93/2011 joined as a Junior Town Planner with the Government of Goa in the year 1977 and held various posts till his superannuation on 31/05/2011 as a Chief Town Planner and Ex-Officio Joint Secretary to Government of Goa.

The petitioner in Criminal Writ Petition No. 94/2011 joined as a Deputy Town Planner in the Government of Goa in the year 1999 and at the relevant time was working as a Member Secretary, North Goa Planning & Development Authority.

The petitioner in Criminal Writ Petition No. 96/2011

joined as a Junior Engineer in the Public Works Department in the year 1978 and was at the relevant time, on deputation with the North Goa Planning & Development Authority.

The first and the second respondent sent a complaint on 4/07/2011 to the third respondent alleging certain illegalities in respect of two projects namely beautification of the Mala Lake and the completion of the Market Complex. The respondent no.3 claimed that the complaint did not reveal commission of a cognizable offence. The first and the second respondent eventually approached the learned Judicial Magistrate First Class, Panaji under Section 156(3) of Cr.P.C. in Criminal Misc. Application No.127/2011/C. The learned Magistrate by an order dated 26/07/2011 allowed the application thereby directing the third respondent to register an FIR within 24 hours "by invoking relevant sections of law as per the ingredients that are disclosed in the said complaint".

CRIMINAL WRIT PETITION NOS. 76, 91 and 95/2011

11. These petitions arise out of the order dated 22.07.2011 passed by the learned Magistrate in Criminal Miscellaneous Application No. 190/2011/A.

12. The petitioner in Criminal Writ Petition No. 76/2011 is a 1992 batch IAS Officer and at the relevant time was working as Secretary Health, Transport, Tribal Welfare, Information and Publicity, Secretary to Governor and Special Secretary Home, Government of Goa.

The petitioner in Criminal Writ Petition No. 91/2011 joined service in the Directorate of Health Services sometime in October, 1980 and at the relevant time was holding the post of Director of Health Services.

The petitioner in Criminal Writ Petition No. 95/2011 is a 1996 batch RBI cadre Officer and since his appointment has worked at various posts in different centres including Kolkata, Patna and was on deputation with Government of Goa. The petitioner has held various posts, including Manager, Assistant General Manager, Deputy General Manager with Reserve Bank of India and Additional Secretary (DMU) and Director PPP Cell, with Government of Goa. The petitioner at the relevant time was working as a Deputy General Manager, Reserve Bank of India, Mumbai.

On 23/06/2011, the respondents no.1, 2 & 3 sent a communication to respondent no.4 alleging certain illegalities

and corruption by the Director of Public Private Participation (PPP) Cell and Additional Secretary, Government of Goa Shri Anupam Kishor, Director of Health Mrs. Rajnanda Desai and Secretary for Health Shri Rajiv Verma in connivance with the service provider – Radiant Life Care Private Limited and others in respect of Mapusa Hospital and sought registration of the FIR under Sections 7,8,9,10,11,12 and 13(1)(c), 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act and Sections 405, 409, 420, 468, 471, 120(B) and 34 of IPC. As the complaint did not evoke a favorable response, the respondents no.1 to 3 approached the learned Judicial Magistrate First Class in Criminal Misc. Application No.190/2011/A. The learned Magistrate by an order dated 22/07/2011 directed the registration of the FIR as per the complaint dated 23/06/2011 within 24 hours from the date of the receipt of the order.

13. These orders which are passed under Section 156(3) of Cr.P.C. have given rise to the present batch of Criminal Writ Petitions.

14. We have heard the learned Counsel appearing for the petitioners and Shri S.R. Rivankar, the learned Public Prosecutor

for the respondent/State. The original complainant, who appears in person is absent.

15. It is submitted on behalf of the petitioners that no case for a direction under Section 156(3) of Cr.P.C. is made out. It is also submitted that the learned Magistrate could not have directed registration of the FIR under the provisions of the Prevention of the Corruption Act as the offences under the said Act are triable by a Special Court.

16. It is further submitted that by virtue of an amendment to Section 156(3) of Cr.P.C., the learned Magistrate is obliged to hear the learned Public Prosecutor/Superintendent of Police before passing an order under Section 156(3) of Cr.P.C. The learned Public Prosecutor submitted that in view of the amendment to Section 156(3) of Cr.P.C., this Court may pass appropriate orders.

17. We have considered the circumstances and the submission made. Section 156(3) of Cr.P.C. was amended w.e.f. 17.09.2014. The amendment reads as under:

"Provided that before passing any orders, the Magistrate shall issue notice to and hear the Public Prosecutor/Government Counsel/Pleader and the Superintendent of Police in the matter."

18. It is trite that an amendment to a procedural/adjective law would operate retrospectively and apply to pending cases. In the present case, the record would disclose that the learned Public Prosecutor was not heard before passing the impugned order. We therefore find it appropriate to send the complaints/applications to the learned Magistrate for passing appropriate order after hearing the learned Public Prosecutor/Superintendent of Police, in accordance with law.

19. In such circumstances, the following order is passed:

(a) All the above Criminal Writ Petitions are partly allowed.

(b) The impugned order dated 23.08.2011 passed in Criminal Miscellaneous Application Nos. 139/2011/D, 140/2011/D and 145/2011/D, order dated 26.07.2011 passed in Criminal Miscellaneous Application No.

127/2011/C and order dated 22.07.2011 passed in Criminal Miscellaneous Application No. 190/2011/A, are hereby set aside.

(c) The complaints are restored back to the file of the learned Magistrate for passing appropriate order, after hearing the learned Public Prosecutor/Superintendent of Police, in accordance with Law.

(d) All the rival contentions of the parties are left open.

(e) Rule is made absolute, in the aforesaid terms.

C.V. BHADANG, J.

F.M. REIS, J.