

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 107 OF 2015

Mr. P. Ravi, major of age,
Indian National,
having office at 573,
Road 4, La Campal,
Miramar, Panaji, Goa.

... Petitioner

Versus

1. Police Inspector,
Pernem Police Station,
Pernem-Goa.

2. Shri Michael D'Souza,
Tiracol, Pernem, Goa.

... Respondents

Mr. Shivan Dessai, Advocate for the Petitioner.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent No. 1.

Ms. Caroline Collasso, Advocate for the Respondent No. 2.

Coram : F.M. REIS &
C.V. BHADANG JJ.

Date : 14th December, 2015.

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

Rule. Rule made returnable forthwith. Mr. Rivankar,

learned Public Prosecutor waives service for the respondent no. 1 and Ms. Collasso, learned Counsel waives service for the respondent no. 2. Heard finally, by consent of the parties.

2. By this petition, the petitioner is seeking quashing of FIR No. 108/2015, registered by P.S. Pernem against the petitioner for the offences punishable under Sections 143, 147, 447, 323 read with Section 149 of I.P.C. and Section 8 of the Goa Children's Act, 2003 (the Act of 2003, for short). The FIR was registered on the basis of a complaint lodged by Mr. Michael D'Souza, Jerome Mendes and Jason Rodrigues. It was alleged that on 25.06.2015 at 5 p.m., the petitioner alongwith 60 to 70 unknown persons entered in the property of Diago Francis Rodrigues, being Survey No. 2/70 of village Tiracol and the petitioner assaulted Master Jason Rodrigues, aged 17 years, with kicks. All the accused persons assaulted the complainants, thereby causing bodily injuries. On the basis of the complaint, an offences came to be registered and the investigation is stated to be in progress.

3. According to the petitioner, he had filed a complaint on the same day with P.S. Pernem against, (1) Mr. Francis Rodrigues, who is the President of St. Anthony's Tenants and Mundkar Association and (2) Mr. Anthony Mendes, who is the Secretary of the said Association and also against Anthony Francis Rodrigues, Elvis Pereira, Santan Rodrigues amongst others for having criminally trespassed in their property with intention to assault, abuse, annoy and attack their personnel and those of their contractor, who were undertaking the work in the property. On the basis of the said complaint, FIR No. 107/2015 is registered against Francis Rodrigues and others under Sections 143, 147, 447, 323, 324, 504, 506(ii), 356, 379, 427 read with Section 149 of I.P.C.

4. The petitioner is the General Manager of M/s leading Hotels Ltd., which has acquired a stretch of land at Tiracol for development of an Eco-Tourism Resort and a Golf Course. It is claimed that the acquisition is in pursuance of the sale deed executed by the Khalap family. It is submitted that the petitioner has obtained necessary permissions for construction and

development of a Golf Course. It is contended that some persons have raised malafide claims of tenancy, in respect of the part of the property acquired by M/s Leading Hotels Ltd. and the proceedings pertaining to the same are pending before the Administrative Tribunal and the Civil Court. It is contended that to the knowledge of the Company, none of the persons have obtained declaration of tenancy under the provisions of Goa Agricultural Tenancy Act.

5. It is submitted by Mr. Shivan Dessai, the learned Counsel for the petitioner that Michael D'Souza and two others had filed a complaint alleging trespass in the property of the third party namely, Diago Rodrigues. It is submitted that such a complaint is inconceivable as the complainants do not claim that the petitioner has ever trespassed in any property owned or possessed by the complainants. It is submitted that M/s Leading Hotels Limited has all the title documents, as also the relevant records establishing that they are the owners of the land and has also the requisite permissions from the competent Authorities for undertaking the development work. It is submitted that going by

the complaint as it stands, no offence under Section 447 of I.P.C. can be made out. It is submitted that rest of the offences, including one relating to rioting, would be consequential to the same. The learned Counsel would also submit that Section 8 of the Act of 2003 could not have been invoked, only because one of the persons allegedly assaulted namely, Master Jason Rodrigues was aged 17 years. He therefore submitted that the petition be allowed.

Reliance is placed on behalf of the petitioner on the decision in the case of **Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others**, reported in **(1987) 1 SCC 424**, in order to submit that interpretation to be placed on a provision must depend on the text, as also the context. It is submitted that viewed from this angle, the offence under Section 8 of the Act of 2003 cannot be said to be made out.

Reliance is also placed on an unreported decision of this Court in the case of **Mr. Suresh Narvekar Vs. State of Goa**, passed in Criminal Writ Petition No. 4 of 2010, decided on 28.01.2010 and a Division Bench judgment of this Court in the

case of **Smt. Smita Khaunte Vs. Police Inspector and Another**, passed in Criminal Writ Petition No. 103 of 2014, decided on 29.10.2015.

6. On the contrary, it is submitted by Mr. Rivankar, the learned Public Prosecutor for the respondent no. 1 that appreciation as to correctness of the FIR or the material collected cannot be undertaken at this stage. It is submitted that in order to succeed in establishing a case for quashing of FIR, the petitioner has to show from the complaint as it stands, that it does not make out any offence. It is submitted that any person can set the criminal law in motion and thus, no exception can be taken in respect of the complaint, alleging trespass in the property of Mr. Diago Rodrigues. It is submitted that the offence of rioting as also, offence under Section 447 of I.P.C. are distinct. However, insofar as Section 8 of the Act of 2003 is concerned, the learned Public Prosecutor fairly submits that no intention to assault or abuse a minor as such, can be made out or read in the complaint/FIR. He fairly submitted that this Court may pass appropriate orders insofar as offence under Section 8 of the Act

of 2003 is concerned.

7. We have given our anxious consideration to the rival circumstances and the submissions made. It appears that there is some dispute about ownership and possession over a stretch of land, included in Survey No. 2/70 of village Tiracol, where M/s Leading Hotels has proposed establishment of an Eco-Tourism Resort and a Golf Course. There are some persons, who are claiming tenancy rights over a portion of the land. There are counter complaints lodged in respect of incident dated 25.06.2015. Thus, while the petitioner has lodged a complaint alleging assault, obstruction etc., on the basis of which FIR No. 108/2015 is registered, there is a counter complaint lodged by Mr. Michael D'Souza and two others alleging similar offences against the petitioner and others. It is neither possible nor appropriate to go into the appreciation of the material on record, as both the offences are said to be under investigation. Merely because, the complainant herein has alleged that the petitioner has criminally trespassed on the land belonging to Mr. Diago Rodrigues, would not be sufficient to claim that an offence under

Section 447 of I.P.C. is not made out. We would hasten to add that we have not expressed any final opinion as such, as it is neither necessary nor warranted at this stage, as the issue is limited to the prayer for quashing of FIR. We therefore, only say that merely because the complainant alleges criminal trespass on the land belonging to a third person, would not be sufficient to hold that, the complaint *prima facie*, would not make out any offence, under Section 447 of I.P.C. Similar is the case with the offences under Sections 143, 147 and 323 read with Section 149 of I.P.C. In the face of the complaint/FIR, as it stands, we are not inclined to hold that a case for quashing of FIR for offences under sections 143, 147, 447 and 323 read with Section 149 of I.P.C., is made out.

8. This takes us to the offence under Section 8 of the Act of 2003. In this regard, we find that merely because one of persons allegedly assaulted was aged 17 years, an offence under Section 8 of the Act of 2003 cannot be said to have been made out.

9. In the case of **Suresh Narvekar** (supra) there was a challenge to the order of framing charge *inter-alia* under Section 8(2) of the Act of 2003. It had so happened that during a religious procession, the petitioner (who was accused no. 1) was sitting in open dicky (rear portion) of a maruti van, in which some fire crackers were stored. The petitioner/accused no. 1 was lighting fire crackers and was throwing them on the road behind the van. There were some children sitting on the rear seat of the maruti van. Suddenly, the fire crackers kept in the dicky caught fire and started bursting in quick succession, on account of which, the inner portion of the maruti van caught fire, resulting in death of some children. This Court after taking a survey of the relevant sections, relating to child abuse and Section 8(2) of the Act of 2003, came to the conclusion that no offence under section 8(2) of the Act of 2003 is made out. Similarly, in the Division Bench judgment of this Court in the case of **Smita Khaunte** (supra), to which one of us (F.M. Reis, J.) was a party, has held that no offence under Section 8(2) of the Act of 2003 is made out.

10. Section 8(2) of the Act of 2003 envisages punishment for child abuse, which is defined in Section 2(m) as under:

"Section 2 :

.....

(m) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following :-

(i) psychological and physical abuse, neglect, cruelty, sexual abuse and motional maltreatment;

(ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death;

11. A bare reading of the aforesaid section in the context of the object of the Act of 2003, which is to protect, promote and preserve the best interests of children in Goa and to create a society that is proud to be child friendly, if read in juxtaposition to the allegations in the complaint, no offence under Section 8 of

the Act of 2003 could be said to have been made out.

12. The Hon'ble Apex Court in the case of **State of Haryana and others V/s Bhajan Lal and others**, reported in **1992 Supp (1) Supreme Court Cases 335**, has set out categories of cases, in which extraordinary jurisdiction under Article 226 of the Constitution or the inherent powers under Section 482 of Criminal Procedure Code can be exercised by the High Court, either to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of the categories in which such powers can be exercised is, where the allegations in the FIR, if any, does not disclose a cognizable offence and even if, taken at their face value, it does not constitute any offences as alleged.

13. In that view of the matter, the petition is partly allowed. The FIR No.108/2015 of P.S. Pernem, to the extent of registration of the offence under section 8 of the Act of 2003, is hereby quashed and set aside. Needless to state that the investigation in respect of rest of the offences under the Indian

Penal Code can proceed.

14. Rule is made absolute, in the aforesaid terms.

C.V. BHADANG, J.

F.M. REIS, J.

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