

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 119 OF 2015.

SHREE DAMODAR SAUNSTHAN
ZAMBAULIM GOA, THOROUGH
ITS PRESIDENT SHRI MANJUNATH
PAI DUKLE AND ANR. PETITIONERS.

VERSUS

THE OFFICER IN CHARGE/
INVESTIGATING OFFICER,
QUEPEM POLICE STATION AND
3 ORS. RESPONDENTS.

Mr. A. D. Bhobe, Advocate for the petitioners.
Mr. S. R. Rivankar, Public Prosecutor for the respondent no.1.
Mr. S. G. Bhobe, Ms. N. Pimenta and Mr. R. Menezes, Advocates
for the respondent nos. 2 to 4.

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

**Reserved on:-28th October, 2015.
Pronounced on:-23rd December,2015.**

ORDER (Per K. L. Wadane, J)

The present petition is filed by the petitioners challenging the FIR lodged by the respondent nos. 2 to 4 with the office of respondent no.1 dated 21.10.2013. The broad allegations in the FIR are as follows:-

2. That the respondent nos. 2 to 4/complainants always come for Damodar Palki on Monday and visit the Damodar Temple at Zambaulim for past so many years. They eat lunch dinner with free coupons in the canteen without any payment and they told

to donate some money in the donation box kept in the canteen.

3. Suddenly, for the past two months one Jairam Bhobe and his junior Ms. Priyanka are taking Rs.40/- for such coupon without any receipt.

4. On 17.10.2015 such one coupon serial No. 73568 for one lunch for Rs.40/- was forged. According to the respondent nos.2 to 4/complainants, the petitioners have committed misappropriation of Rs. 3,00,000/- (Rupees three lakhs only) which is a temple money and belonging to the public. Further, they alleged that Shri Jairam Bhobe with conspiracy with others want to give 1,30,000 square metres land of temple to Sri Sri Ravi Shankar without auction as per the Devasthan Regulation Act by removing the people of other caste including schedule tribes without giving them any chance or even taking them into confidence. With these allegations the respondent nos. 2 to 4 requested to take cognizance and to investigate into the matter. Ultimately cognizance was taken by the respondent no.1 as per the order of the Criminal Court and during the investigation investigating officer visited the premises of temple/devasthan. However, Office bearer of the devasthan committee are not co-operating with the investigation as some orders from this Court were in favour of devasthan committee. So, ultimately investigating officer submitted a report to the criminal Court i.e

“A” summary.

5. We have heard arguments of Mr. A. D. Bhobe, learned Counsel appearing for the petitioners, Mr. S. R. Rivankar, Public Prosecutor appearing for the respondent no.1 and Mr. S. G. Bhobe, Counsel appearing for the respondent nos. 2 to 4.

6. During the course of arguments, Mr. A. D. Bhobe, learned Counsel has argued that the petitioner no.1 is a private trust governed by their own independent bye-laws and it is nothing to do with the respondent nos. 2 to 4. The respondent nos. 2 to 4 were denied free meal, so annoyed with this denial of free lunch they have filed false criminal case.

7. As against this, Mr. S. G. Bhobe, learned Counsel appearing for the respondent nos. 2 to 4 has argued that the officials of the petitioners are collecting money and they are not properly utilising such money and there is misappropriation of public money to the extent of Rs.3,00,000/- (Rupees three lakhs only). Therefore, according to Mr. S. G. Bhobe, allegations set out in the FIR are sufficient to constitute the offence of misappropriation. Mr. A. D. Bhobe, learned Counsel appearing for the petitioners has submitted that on the face of record prima facie there are no allegations against the petitioners to constitute offences as alleged.

8. Looking to the submissions made by both sides, we have examined material on record particularly the report of the investigating officer in which it is mentioned that he visited the devasthan premises and requested the officer of the devasthan to show the accounts of the devasthan, but the officer have refused to give such information. Therefore, it was difficult for the investigating officer to carry out investigation as to the alleged allegations of misappropriation. After considering the report of investigating officer it appears that investigating officer has not carried out investigation, merely he has visited the devasthan premise and consequently he has submitted "A" summary. Paragraph 24(5) of the Criminal Manual deals with the summary of final order which reads as follows:-

"Class 'A' cases: The cases which are (1) 'TRUE' and (ii) wherein an accused is tried and in the absence of conclusive evidence, is acquitted.

Class 'B' cases:Wherein no offence has been committed at all either by the accused or by any one else, but wherein the complaint is found to be "false and maliciously false".

Class 'C' cases: Wherein no offence has been committed at all either by the accused or by any one else, but wherein the case is found to be "neither true nor false" or "false but not maliciously false".

"Non-Cognizable" Cases- The cases, in which the accused are

convicted for non cognizable offences, should be classed as "Non-cognizable". The cases, in which the Police report discloses commission of only non cognizable offences, should also be classed as "Non cognizable".

9. 'A' summary refers to the cases which are true that means investigating officer is prima facie of the opinion that the allegations levelled against the petitioners are true but since he was unable to collect the necessary evidence, therefore, he has submitted 'A' summary. Criminal Court has refused to accept 'A' summary and directed to make further investigation. Therefore, the petitioners have filed this present petition.

10. On perusal of the contents of the FIR, it appears that there are some allegations against the petitioners in reference to the misappropriation of the public money. It is well settled that the inherent powers of the Court under Section 482 Cr.P.C. has to be exercised very sparingly. If the allegations made in the FIR discloses commission of the offence then it is not necessary to exercise powers of this Court under Section 482 of Cr. P.C. Such power are to be exercised in the case where on the face of the record, no offence is disclosed against the accused persons. But in the present case, there are specific allegations of misappropriation of public money, as such, it is not necessary to examine each and every allegations as if this is

Appellate Court. Since there are certain allegations in reference to the misappropriation, it is not desirable to quash and set aside the FIR. However, it is made clear that above observations are made prima facie to consider the relief as to whether FIR is to be quashed or not. Such observations shall not come in the way of the trial Court for deciding the Criminal Case on merits. Consequently, there is no substance in the Writ Petition and accordingly, it is dismissed.

K. L. WADANE, J.

F. M. REIS, J.

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