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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 120 OF 2014

Smt. Marcelina Antao,
aged 63 years, Indian
National, resident of
House No. 793/12,
Opposite Fr. Agnel
Degree College, Malwara,
Pilar, Agasaim Goa.

.... Petitioner

V e r s u s

1. State of Goa, through
its Police Inspector,
Agasaim Police Station,
Agasaim Goa.

2. Sharadha Shrinath Naik,
of major age, Indian
National, resident of
House No. 235, near
V. P. Sancoale,
Mormugao Goa.

... Respondents

Mr. D. Pangam, Advocate for the petitioner.

Mr. D. Lawande, Additional Public Prosecutor for respondent no.1.

Mr. Deep Shirodkar, Advocate under Free Legal Aid Scheme for
respondent no.2.

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

Date :- 24th March, 2015

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

Heard Mr. D. Pangam, learned counsel appearing for

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the petitioner, Mr. D. Lawande, learned Additional Public Prosecutor appearing for respondent no.1 and Mr. D. Shirodkar, learned counsel appearing for respondent no.2 under Free Legal Aid Scheme.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. The above Writ Petition inter-alia seeks to quash and set aside by a Writ of Certiorari or any other Writ the FIR No. 83/2014 dated 26.07.2014 registered on 09.10.2014 at Agasaim Police Station, Tiswadi Goa.

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

The respondent no.2 Sharadha Naik lodged a complaint to the Police Station on 26.07.2014 alleging that one Rukumani P. Naik was her sister who expired on 17.05.2014. After her death the landlord Mr. Melwin Fernandes, Mrs. Marcelina Fernandes (i.e. the petitioner) and Mr. Reney Fernandes had come to her sister's

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place and told her that they are demolishing the said house. At that time, the respondent no.2 informed the landlord that till one year, the house will remain at the said property and after that she will inform to do so. But suddenly within one month, they demolished the said house without informing the respondent no.2. The neighbour of her sister informed regarding the demolition of the said house and all the house articles inside the house were damaged due to rain.

6. After registering the FIR, the petitioner was called in the Police Station. At that time, she came to know about the registration of the crime. The above mentioned FIR was registered on 09.10.2014 on the basis of the complaint dated 26.07.2014. According to the petitioner, the complaint filed against her is totally false, malicious and illegal. The respondent no.2 with an intention to grab the petitioner's property filed such a false frivolous complaint.

7. The property bearing survey No. 47/3 of Village Goa Velha is owned and possessed by the petitioner's husband namely Mr. Epifanio A. A. V. Fernandes e Vaz who is a senior citizen and presently residing in U.K. Taking advantage of such position, one Rukumani Naik without knowledge and consent of the petitioner

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erected a small hut in the said property and after her death, in the monsoon the said hut was collapsed. After the death of Rukumani who has no issue, the respondent no.2 is trying to lay a claim or right in respect of the petitioner's property and with that oblique motive only the respondent no.2 has lodged the complaint.

8. We have heard Mr. D. Pangam, learned counsel appearing for the petitioner, Mr. D. Lawande, learned Additional Public Prosecutor appearing for respondent no.1 and Mr. D. Shirodkar, learned counsel appearing for respondent no.2. According to Mr. Pangam, learned counsel appearing for the petitioner the complaint is the outcome of the civil dispute between the parties and the respondent no.2 with an intention to grab the property of the petitioner has lodged a complaint against the petitioner in order to mount pressure upon them. According to Mr. Pangam, no offence has been committed by the petitioner. The respondent no.2 has no locus to file a complaint against the petitioner as she has no concern with the property in any way and merely because she is a sister of the deceased Rukumani, she cannot claim right over the suit property or got no right whatsoever in the property.

9. As against this, Mr. D. Shirodkar, learned counsel

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appearing for respondent no.2 has argued that considering the contents of the FIR, prima facie, it is seen that the petitioner and others have committed offence punishable under Sections 448, 427 read with 34 of the Indian Penal Code. Therefore, there is no substance in the petition.

10. We have perused the papers of the investigation. Looking to the contents of the FIR, no date, time and period mentioned regarding the alleged demolition of the house. Further more, in the FIR though it is contended by the respondent no.2 that some neighbours have informed the fact of demolition to her however, no names of the witnesses have been quoted in the FIR. Further more, there is an inordinate delay in filing the FIR which is not explained at all or single reason is given by the respondent no.2 as to why such FIR is lodged at very belated stage. Further more, from the contents of the FIR, it is seen that some articles (particulars are not given) were damaged due to rain. So looking to the fact that the person (Rukumani) residing in the hut was already expired and the fact that the articles in the house were damaged due to rain, we are of the opinion that no material is placed on record to believe the version of the respondent no.2 even at this stage. The claim and the counter claim between the parties appear to be of a civil nature for which they can avail of

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appropriate remedy if so advised but in any way the institution of the criminal proceedings is improper. The petitioner appears to be old aged lady. In such circumstances, we find it appropriate to quash and set aside the FIR. Hence, the following :

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- (i) The FIR No. 83/2014 filed on 26.07.2014 and registered on 09.10.2014 with Agasaim Police Station as against the petitioner stands quashed.
- (ii) Rule is made absolute in above terms.
- (iii) The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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