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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 19 OF 2015

1. Mr. Manjunath Bhat,
major,
 2. Mrs. Sangeeta Manjunath Bhat,
major, wife of Manjunath Bhat
(Both residents of Tarche Galu Colvale
Bardez Goa.)
- ... Petitioners

V e r s u s

1. State of Goa,
Through Public Prosecutor,
Panaji Goa.
 2. Anant Rama Govekar,
Major, H.No.9/4, Koniwada,
Colvale, Bardez Goa.
- ... Respondents

Mr. V. A. Lawande, Advocate for the petitioners.

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

Mr. G. Naik, Advocate for respondent no.2.

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

ORDER RESERVED ON : 16.07.2015

ORDER PRONOUNCED ON : 16.09.2015

O R D E R (Per K. L. Wadane, J)

By this petition, the petitioners seek to quash and set aside the FIR No. 223/14 dated 30.05.2014 lodged by the respondent no.2.

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

On 30.05.2014, the respondent no.2 lodged a complaint to the Police Station, Mapusa, alleging that on the same day at about 10.00 a.m., at Koniwada, Colvale, the petitioner no.1 along with other 20 unknown persons with their common object over the property dispute formed an unlawful assembly, armed with deadly weapons trespassed into the property bearing survey No.65/6 of Colvale which is belonging to the respondent no.2 and threatened his niece Ms Ashwini Govekar with dire consequences to kill her. They also assaulted the cattles of the respondent no.2 which were tied inside the cow shed, left the cattles loose due to which all of them ran away and demolished the entire cow shed causing loss to the respondent no.2.

3. On the basis of the complaint lodged by the respondent no.2 the offence came to be registered against the petitioner no.1 and others for the offence punishable under Sections 143, 147, 148, 447, 506, 429, 427 read with 149 of the Indian Penal Code.

4. We have heard the arguments of Mr. V. A. Lawande, learned counsel appearing for the petitioners, Mr. M. Amonkar, learned Additional Public Prosecutor appearing for respondent no.1 and Mr. G. Naik, learned counsel appearing for respondent no.2

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and we have also gone through the records.

5. It is the case of the petitioners that the petitioner no.2 is the owner of the vacant plot no.1 admeasuring an area of 363 square metres situated at Colvale in survey No. 65 sub division 6 of Colvale village which the petitioner no.2 has purchased from one Mr. Hanumanth Ramnath Halornekar alias Halarnkar and his wife on 11.02.2013. Since then the petitioners are in possession of the said plot. In the month of April, 2013, the petitioners have constructed a shed for storing construction material. On 26.11.2013 the petitioner no.2 applied for conversion of the land. Accordingly, the concerned authority issued provisional NOC dated 04.12.2013 for the construction of a residential house and compound wall in the said property.

6. After the inquiry, the petitioner no.2 obtained a sanad on 27.02.2014. The petitioners also obtained a permission from the Forest Department to cut nine trees. The construction licence was also granted by the Village Panchayat of Colvale. So according to the petitioners, the disputed plot is in their lawful possession. According to Mr. Lawande, the dispute between the parties is of a civil nature. Therefore, the criminal proceedings cannot be allowed to be continued in view of the various decisions of the Apex Court.

7. Mr. Amonkar, learned Additional Public Prosecutor appearing for respondent no.1 has argued that there is sufficient material on record to constitute offence, prima facie.

8. Mr. G. Naik, learned counsel appearing for respondent no.2 has argued that there is ample evidence on record to show that the petitioner no.1 has entered into the property i.e. cow shed of respondent no.2 in front of his house and demolished the entire cow shed. So also the petitioner no.1 threatened the niece of respondent no.2 Ms. Ashwini Govekar with dire consequences to kill her. The learned Additional Public Prosecutor has made available the papers of the investigation, from which it is seen that the FIR is based upon the information given by the other witnesses in respect of the alleged incident. From the statement of Ms. Ashwini Govekar, it is seen that the petitioner no.1 named as Bhatji of Ram Temple and 20 unknown persons entered in the cow shed and they started demolishing the same. They assaulted the cattles, left them loose due to which the cattles ran away. They also cut down the trees grown in the said property and threatened to kill her. The same is the version of the another witness Ritesh Warkhandkar. The statements of the above two witnesses and overall circumstances on record, we are of the opinion that there is evidence of involvement of petitioner no.1 and

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20 unknown persons in the alleged offence. Therefore, it cannot be said that the first information report is without any substance and groundless. The learned Advocate appearing for the petitioners has relied upon the observations in the case of **Joseph Salvaraj A V/s State of Gujarat and others**, reported in **(2011) 7 SCC 59** in which it is observed at para 10 thus :

“**10.** The allegations in the FIR clearly disclose a civil dispute between the parties and the FIR seems to have been filed only with an intention to harass and humiliate the appellant. This was a pre-emptive move by the complainant.”

9. We have gone through the facts and observations of the above cited authority. The fact in the above cited authority is in respect of cheating and the Hon'ble Apex Court has found that there appears to be no cheating or dishonest inducement for delivery of property or breach of trust by the appellant therein and the FIR is an abuse of process of law because civil dispute is sought to be given colour of criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal acquisition. The observations of the

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above cited authority are not applicable to the facts of the present case because in the present case the petitioners have stated that they have purchased a plot no.1 from the survey no.65/6. However from the contents of the application filed by the petitioner no.2 under Sub -Section (1) of Section 32 of the Goa, Daman and Diu Land Revenue Code, 1968, it appears that the petitioner no.2 has mentioned that her plot is situated in survey no.65/6-C having an area of 364 square metres. Therefore, it appears that there is again sub division of Hissa no.6. Probably, because of this confusion, the parties are led to confusion and are claiming ownership and possession over the cow shed. From the documents, it is clear that the plot purchased by the petitioner no.2 is from survey no.65/6-C whereas the complaint filed by the respondent no.2 in respect of cow shed which is in front of the house of respondent no.2. Thus, from the record, it seen that there is prima facie evidence to show the involvement of petitioner no.1 in the alleged offence. Therefore, it is not proper to quash and set aside the FIR.

10. The petitioners have an opportunity to appear before the Trial Court and apply for discharge, if they so advised. In case any such application for discharge is filed by the petitioners, the learned Trial Court shall examine such application after hearing the

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parties in accordance with law on its own merits. Needless to say that the findings arrived at herein above are only prima facie findings and shall not influence the learned Trial Court while deciding the matter on its own merits. Consequently, the petition stands dismissed.

K. L. WADANE, J

F. M. REIS, J

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