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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 119 of 2014

Mr. Viraj Govekar,
Son of Bhavani Shankar Govekar,
Major of age, married,
Indian National,
C/o. Mahindra Holiday Resort,
Pedda Dumotem, Varca,
Salcete- Goa,
Resident of H. No. 184/1,
Gujrrabhat, Goa Velha. ... Petitioner.

Vs.

State of Goa,
Through P.I.,
Colva Police Station,
Colva, Salcete-Goa. ... Respondent.

Mr. Shivan Dessai, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondent.

CORAM :- U. V. BAKRE, J.

DATE : 30th January, 2015

ORAL JUDGMENT :

Heard Mr. Dessai, learned Counsel for the petitioner and Mr. Rivankar, learned Public Prosecutor for the respondent.

2. Rule. Rule made returnable forthwith. By consent, heard forthwith.

3. By this petition, the petitioner has prayed for quashing and setting aside the order dated 30/07/2014 passed by the learned Chief Judicial Magistrate, Margao, Goa in Criminal Case No. 240/S/2012/A and to discharge him from the offences in respect of which the charges have been framed by the learned Chief Judicial Magistrate.

4. A complaint dated 08/12/2012 was lodged by Mrs. Joanita Pereira with Colva Police Station against the petitioner and others for criminally trespassing into her property bearing Survey No. 173/1 and causing damage by cutting and burning mango trees. F.I.R. No. 4/2012 was registered for offences punishable under Sections 447 and 427 read with Section 34 of I.P.C. and upon completion of investigation, chargesheet was filed before the learned Chief Judicial Magistrate at Margao, Goa which came to be registered as Criminal Case No. 240/S/12/A. On 16/07/2012, the learned Chief Judicial Magistrate took cognizance of the said case and issued summons to the accused persons. After hearing the arguments before charge, the learned Chief Judicial Magistrate, by order dated 30/07/2014, held that sufficient prima facie evidence is found from the complaint and documentary evidence annexed to the complaint, to frame the charge for offences punishable under sections 447 and 427 read with Section 34 of I.P.C. against

the accused nos. 2 and 4. The petitioner, who is the accused no. 2, is aggrieved by the above order and has filed the present writ petition.

5. Mr. Dessai, learned Counsel for the petitioner submitted that the complainant claims to be the owner of Survey No. 173/1 of Varca village. He submitted that the petitioner is the employee of Mahindra Holiday Resort India Ltd. and that the complainant and another had filed Civil Suit No. 283/2004/FTC-I against the said Mahindra Holiday Resort India Ltd. (defendant no. 5), State of Goa and others and by judgment dated 24/09/2010, the said suit was dismissed with costs. He submitted that in the said suit, there was dispute about the same Survey No. 173/1 between the complainant and defendant no. 5. He read out issue no. 2 and additional issues no. 1, 2 and 6 in the said suit which pertained to Survey No. 173/1. He submitted that the allegation against the defendant no. 5, namely Mahindra Holiday Resort India Ltd was that they had encroached upon the Survey No. 173/1. He submitted that the issue no. 2 in the said Civil Suit, insofar as the encroachment on the land of Survey No. 173/1 by defendant no. 5 and others, was answered in the negative. He, therefore, urged that there cannot be a prosecution for criminal trespass and consequently for mischief with regard to the said property in

respect of which neither ownership nor possession was proved by the complainant. He submitted that the competent forum i.e. Civil Court has decided the issue. He, therefore, urged that the petition be allowed and the impugned order be set aside and the petitioner be discharged.

6. On the other hand, Mr. Rivankar, learned Public Prosecutor, submitted that for filing the said Civil Suit No. 283/2004, the cause of action had arisen some time in the year 2000, since the defendant no. 5 in collusion with the defendants no. 3 and 4 had dumped mud and rubble stones for construction of road in Survey No. 173/1. He pointed out that in paragraph 16 of the judgment dated 24/09/2010, the learned Ad hoc District Judge-I has held that the plaintiffs are not in possession of the land, which has been acquired by the Government, but are the owners in possession of the remaining unacquired land. He submitted that the complaint giving rise to Criminal Case No. 240/S/12 is regarding the criminal trespass and mischief committed by the petitioner and others, on 08/12/2012, in the remaining portion of the property belonging to the complainants. He, therefore, urged that the present complaint has nothing to do with the land, which was subject matter of the said civil suit. He submitted that there is documentary evidence as well as oral evidence of the witnesses and, therefore, a strong

prima facie case existed against the applicant and other accused and hence, no interference is called for with the impugned order.

7. I have gone through the entire material on record and I have considered the arguments advanced by the learned Counsel for the parties.

8. The record and proceedings, including the judgment and decree dated 24/09/2010, passed in Civil Suit No. 283/2004/FTC-I does not form part of the chargesheet which culminated into Criminal Case No. 240/S/12/A. Charge has been already framed and the case is pending for trial. The petitioner can very well produce the said documents to prove his innocence. Even otherwise, a perusal of the Judgment dated 24.09.2010 in civil suit No. 283/2004 reveals that the cause of action for filing the said suit had arisen some time in the year 2000 since the defendant no. 5 i.e. Mahindra Holiday Resort Indian Ltd in collusion with the defendants no 3 and 4 had dumped mud and rubble stones for construction of road in the property bearing Survey No. 173/1. The dispute, thus, was only about the portion covering the road. Accordingly, issues were framed in the said suit and issue no. 2 was whether the plaintiffs proved that the defendant further encroached in an area of 870 square metres of Survey No. 173/1 which is in possession of the plaintiffs, plot no. 2, as tenant. This

issue has been answered in the negative. That means that the complainant could not prove the ownership and possession of the said area admeasuring 870 square metres of Survey No. 173/1. However, a perusal of the paragraph 16 of the judgment dated 24/09/2010 passed in the said suit reveals that the plaintiffs are owners in possession of the unacquired land.

9. A perusal of the complaint filed by Mrs. Joanita Pereira reveals that the applicant and another person had trespassed into the property of the complainant bearing Survey No. 173/1 and under their directions, about 4 to 5 security guards and labourers had put fire to the trees. The complainant has produced a receipt showing that an amount of ₹ 1830/- has been paid towards purchase price of the paddy field bearing No. 173/1 having area of 4575 square metres of village Varca as per the order passed in Case No. MAM/TNC/PUR/ Varca/2002/96. There is inspection report prepared by Engineer Shri Neelesh Laad. There is a panchanama of the scene of offence prima facie establishing the damage caused to the property. There is a statement of eye witness namely Mrs. Francisca Fernandes. Besides the above, there are photographs showing the damage. In the circumstances above, there is prima facie evidence against the applicant and, therefore, the impugned order cannot be called as illegal or improper. There

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is absolutely no merit in the present petition.

10. In the result, the petition is dismissed. Rule is discharged accordingly.

U. V. BAKRE, J.

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