

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 10 OF 2016

SANGAPPA VIRAPPA TENGINAKAI.

... Petitioner

Versus

THE STATE, THROUGH THE P.P. HIGH
COURT AT PANAJI.,

... Respondent

Petitioner in Person.

Ms. M. Pinto, Additional Public Prosecutor for the respondent.

Coram:- S. B. SHUKRE, J.

Date:- 10th February, 2016

P.C.

Ms. Pinto, learned Additional Public Prosecutor waives service for the respondent- State.

2. Heard.

3. According to the petitioner, no sufficient opportunity has been given to him to prove existence of prima facie case so necessary for issuance of process against accused persons named in the complaint. However, as rightly pointed out by the learned Additional Public Prosecutor, the orders impugned herein are self-explanatory and unequivocally speak of ample opportunities having been given to the petitioner to establish his prima facie claim against the accused persons. Therefore, the argument deserves to be rejected and is rejected accordingly.

4. Although the petitioner, who is the original complainant, states in the complaint dated 06/02/2009 that the incident is of November, 2000, the petitioner now says that the incident took place not in November, 2000 but, in November, 2004. According to him, November, 2000 mentioned in the complaint is a typing error. This argument cannot be accepted. The complaint was pending on the file of the learned Magistrate till March, 2015 and yet the petitioner, for all these years, did not make a single effort to amend the complaint so as to bring on record correct period of incident. The argument is, therefore, rejected.

5. Whatever may be the time of incident, November, 2000 or November, 2004, fact remains that the petitioner or the complainant has not given any explanation whatsoever as to why he has approached the Court after a lapse of about 9 years or 5 years, as the case may be, after the incident took place. The incident, according to the petitioner, relates to forcible and unlawful occupation of his house by the accused and yet the petitioner takes no steps against such persons for 9 or 5 years, rather he chooses to tolerate them in his house for so many years. Admittedly, he has not filed a civil suit for eviction against these persons. The petitioner's explanation that he had filed complaints with Police and other authorities in that regard and as they did not take any action in the matter that he filed a private complaint dated 06/02/2009 before the Court of Judicial Magistrate,

First Class, Mapusa, can also not be accepted. The reason being the same. It is unnatural for such an aggrieved person to see some persons unlawfully residing in his own house for such a long period of time. These facts reasonably indicate that there is no prima facie substance in the allegations made in the complaint and further show that at the most the dispute, if it is there, has purely civil attributes.

6. In the circumstances, I find no illegality or arbitrariness in the orders impugned herein. No interference is warranted. The petition deserves to be dismissed and is dismissed accordingly.

7. The petitioner states that he may be granted liberty to challenge this order before the Hon'ble Apex Court. Such liberty the petitioner can always have, in accordance with law.

S. B. SHUKRE, J.

SMA