

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 31 OF 2016

Mario Francisco Lobo,
s/o late Dr. Jose Lobo,
major, House No.7/36-A,
Salmona, Saligao, Bardez,
Goa.

... Petitioners

Versus

1 The State of Goa
through Chief Secretary,
with office at Secretariat,
Alto Porvorim, Bardez, Goa.

2 Calangute Police Station,
represented herein by
its Police Inspector,
Calangute, Bardez, Goa.

3 The Police Inspector,
Calangute Police Station,
Calangute, Bardez, Goa.

... Respondents

Shri Ryan Da Piedade Menezes, Advocate for the petitioner.

Shri Mahesh Amonkar, Additional Public Prosecutor for the respondent no.1.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ.

RESERVED ON : 14th June,2016.

PRONOUNCED ON : 5th October,2016.

JUDGEMENT : (PER NUTAN D. SARDESSAI, J.)

Heard Shri Ryan Menezes, learned Advocate for the petitioner and Shri Mahesh Amonkar, learned Additional Public Prosecutor for the respondent no.1.

2. Rule. Heard forthwith with the consent of the learned Counsel for the parties. Learned Counsel appearing for the respondents waive service.

3. Shri Menezes, learned Advocate for the petitioner contended that certain persons were named in the complaint lodged by the complainant with the respondent no.3 who had allegedly committed the offences with the others after forming a mob of 30 to 40 persons in the property of the complainant. However in the chargesheet filed by the respondent no.3 certain named persons were not arrayed as the accused and there was also no reason or justification for their non-impleadment. The statement of the nephew too was not recorded who was present at the site at the time of the offence and could have shed light on the incident and the persons involved therein. There were statements on record which indicated that such persons could be identified who had indulged in the offences and therefore the petitioner who had no other remedy was constrained to approach this Court for a direction to the respondents to conduct a fresh and proper investigation and in the alternative to carry out proper investigation in accordance with law and pending the same, the proceedings before the Judicial Magistrate First Class, Mapusa be kept in abeyance and finally for a direction to hold an enquiry and/or

disciplinary action against the concerned Officials of Goa Police who had made a deliberate attempt to sabotage/scuttle the investigation.

4. Shri Ryan Menezes, learned Advocate for the petitioner relied in **Sandeep Rammilan Shukla V/s. State of Maharashtra and others** [2009 ALL MR (Cri) 2991], **Mohan Govekar Metro Bar v/s. State (by Public Prosecutor) and another** [2014 (1) Bom. C.R. (Cri.) 802], **Randhir Singh Rana V/s. State (Delhi Administration)** [1997 AIR (SC) 639] and **Reeta Nag v/s. State of West Bengal and others** [2009(11) Scale 395] to wrap up his argument that he had no remedy available to pursue before the Magistrate and was entitled to appropriate reliefs from this Court. Shri M. Amonkar, learned Additional Public Prosecutor on behalf of the respondent no.1 submitted that the complainant was not at all present at the site when the alleged incident took place and took us through the complaint. On his part he too adverted to the submission of Shri Ryan Menezes, learned Advocate for the petitioner and the other investigation records and submitted that the petition was misplaced and no reliefs as prayed for were tenable.

5. We have considered the arguments canvassed by Shri

Ryan Menezes, learned Advocate for the petitioner and Shri M. Amonkar, learned Additional Public Prosecutor for the respondent no.1 and besides considered the judgments relied upon by learned Advocate Shri Ryan Menezes to consider the tenability of the petition.

6. The complaint which is the substratum of the petitioner's case indicates that on 05/07/2012 at about 09.45 hours a mob of 30 to 40 persons had come to his property at the instance of Felix Fernandes and Peter Fernandes residing in the Survey no.211/1 and the said mob which comprised of men and women were led by Annie Coelho - the local panch member alongwith her husband Edward Coelho, Joaquim Lobo and another two individuals who were identified by his personnel at site. It was his case in the complaint that the mob had trespassed in his property, threatened his persons working, supervisor, and other personnel present at the site with threats to kill, forced the labourers to stop the on going construction work which they were carrying out in his property and abused his labourers as well as himself and his family members with filthy words. The complainant accordingly prayed for necessary action against the wrongdoers.

7. There was another complaint at his instance on

09/07/2012 against Felix and his wife Leopaldina Fernandes and Peter Fernandes anticipating that no action had been taken on his earlier complaint dated 05/07/2012. This complaint reflects that on the said day at about 17.30 hours a mob led by the same Felix Fernandes with his wife, daughter and Peter Fernandes and one son of their brother had trespassed in their property with threats to kill his labourers as well as his two nephews apart from his Manager and Supervisor who were present at the site where the construction of a new block was going on. This complaint reflected that Felix had entered the foundation pit and after picking up a spade had flung it at his two nephews which had very narrowly missed hitting them. He had also named the persons in the mob being Joaquim Lobo, Sara Fernandes and Perpetua as being the miscreants and against whom action was prayed for in accordance with law.

8. It is a matter of record that the respondent no.3 had filed a chargesheet under Sections 143, 504, 447 and 502 (II) r/w. 149 of I.P.C. against Felix Fernandes with his wife and his brother Peter, Caitano and his wife for having committed the offences punishable thereunder in respect of the incidents which took place on 05/07/2012 and 09/07/2012 at Khobrawaddo, Calangute. The statement of his Supervisor to which he had made a reference speaks of a mob of 30 to 40 peoples entering the property of the

complainant headed by Peter and his brother Felix and abusing them in filthy language and threatening the complainant and the supervisor with dire consequences in case the construction work was not stopped. He also referred to a mob of 30 to 40 persons entering the complainant's property headed by Peter and Felix and indulging in acts of abuses and threats but there is not even a fleeting reference to the presence of the other persons referred to in the complaint nor his ability to identify such persons as was the contention of Shri Menezes, learned Advocate for the petitioner.

9. The statement of the labour contractor in similar terms refers to a mob of 30 to 40 persons having entered the complainant's property headed by two persons whom he knew by face and they were neighbours who had abused them with filthy words and besides threatened them and the workers with dire consequences in case the construction activities were not stopped. Similar was the position on the second date i.e. 09/07/2012. He too did not make a reference to any of the persons referred to by the complainant in his complaint who had allegedly abused and threatened him and his family members with dire consequences. It is also a matter of record that the complainant had filed an application under Section 156(3) of Cr.P.C. before the Judicial Magistrate First Class, Mapusa and a notice was issued by the

learned Judicial Magistrate First Class to the Police Inspector, Calangute Police Station directing to file a report.

10. In **Sandeep Shukla** (supra), the Division Bench of this Court held that if a person has been named by the complainant and about whose involvement several others have spoken, then, it is the duty of investigating machinery to proceed against him by naming him as an accused. He must be brought to trial and whether he is guilty or innocent is not for the investigating machinery to decide. Their plain duty is to proceed in accordance with law and file a case naming all persons whose involvement is clear from the materials produced and thereafter for the court of law to render any decision with regard to their innocence or guilt.

11. In **Mohan Govekar** (supra), the learned Single Judge of this Court held that after a report is sent to the Magistrate under Section 170 of Cr. P.C., the Magistrate can exercise the power given under Section 190 of the Code and use further provisions like Section 204 of the Code. There is no provision in the Code allowing the Magistrate to give direction suo moto to the Investigating Agency to make further investigation when a report under Section 170 of the code is filed and a chargesheet is filed.

12. In **Randhir Singh Rana** (supra), the question at large was whether a Judicial Magistrate after taking the cognizance of the offence on the basis of the Police report and appearance of the accused in pursuance of the process could order of his own the investigation in the case. It was not in dispute that the Magistrate could order investigation before taking cognizance under Section 190 of Cr. P.C. and as contemplated as subsection 3 of Section 156 of the Code. However the Magistrate of his own could not order further investigation.

13. In **Reeta Nag** (supra), a similar question arose whether after the chargesheet had been filed by the Investigating Agency under Section 173(2) of Cr. P.C. and charge had been framed against some of the accused on the basis thereof and/or other accused had been discharged whether the Magistrate could direct the Investigating Agency to conduct the reinvestigation or even further investigation in terms of sub-Section 8 of Section 178 of Cr. P.C. A reference was made to the judgment of the Apex Court in **Randhir Singh Rana** (supra), where it was similarly held that order in reinvestigation of the matter was a course of action beyond the jurisdiction and competence of the Magistrate and was in excess of his jurisdiction. Each of these judgments buttressed the proposition of learned Advocate Shri Ryan Menezes for the

petitioner that he had no remedy before the Magistrate since a chargesheet was filed in the case based on the complaint and that his remedy only lay before this Court.

14. No doubt the petitioner had no remedy before the Magistrate to order reinvestigation or further investigation once the chargesheet was filed and cognizance was taken. Nonetheless, it has to be seen whether on the basis of the material on record the petitioner was at all entitled to any directions to the respondents to carry out proper investigation in the crime and/or consequently to order an enquiry against the concerned official for the purported attempt to sabotage the investigation qua his complaint. The records starting from the complaint dated 05/07/2012 and 09/07/2012 have been examined in detail and from which it is borne out that the complainant was not present at the site of the incidence of the alleged incident of threats and abuses and attempt to cause harm to the relatives of the complainant. For no explicable reason the so called nephews of the complainant have also not volunteered their statements before the Police assuming for a moment that the Police did not know about their presence at the spot at the relevant time. Moreover the complainant had also not made any request to the police to record their statements from the time of lodging the complaint in July, 2012 till even the filing of the

chargesheet and it is only in this petition filed more than three years later that a grievance is sought to be made that the Police Officers have not been diligent in conducting the investigation in a fair and impartial manner and/or necessitating enquiry against them for sabotaging the investigation.

15. Besides it is always open to the State and/ or the complainant to seek the indulgence of the learned Judicial Magistrate First Class to take recourse to Section 319 of Cr.P.C. where there is ample power to proceed against whom no chargesheet has been filed. It is not as if the learned Judicial Magistrate First Class cannot seek recourse to this provision of law if it is materially borne out from the records that their presence is required to be impleaded as the co-accused in the crime. The petition is therefore found wanting in merits and hence we pass the following:

O R D E R

1. Rule is discharged.
2. The petition stands dismissed.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.