

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.16 OF 2016**

1 Shri Diago Pereira,
Son of Albert Pereira,
major of age,
R/o.H.No.10/4(1),
Firguem Bhat, Utorda,
P.O. Majorda, Salcete Goa.

2 Shri Aleixo Arnolfo Pereira,
Son of Mr. Francisco Xavier
Pereira, Aged 55 years, R/o.
H.No.150, Utorda, P.O.
Majorda, Salcete, Goa.

.... Petitioners

V/s

1 State of Goa,
Through Police Inspector,
Verna Police Station,
Verna, Salcete, Goa.

2 Shri Shailesh A. Narvekar,
Presently Police Inspector,
Having office at Verna Police
Station, Verna, Goa.

3 Shri Custodio Pereira,
Major of age, Resident of
Antonio Pereira Ward,
Utorda, Goa.

4 Shri Milroy Pereira,
Son of Custodio Pereira,
Resident of Antonio Pereira
Ward, Utorda, Goa.

5 Shri Babuso Pawar,
Police Sub Inspector,

Investigation Officer,
Verna Police Station.

- 6 Public Prosecutor
High Court of Bombay at ...deleted Respondents
Goa.

Shri S. Vales, Advocate for the Petitioners.

Shri S.R. Rivankar, Public Prosecutor for Respondent No.1.

**CORAM : C.V. BHADANG &
NUTAN D. SARDESSAI, JJ.**

Reserved on : 31st March 2016

Pronounced on : 10th June 2016

JUDGMENT : (*Per C.V. BHADANG, J.*)

Rule. Rule made returnable forthwith. The learned Counsel for the respondent no.1 waives service. Heard finally by consent of the parties.

2. By this petition, the petitioners are seeking quashing of FIR bearing No.133/2015 dated 16/12/2015 of P.S. Verna, by which offences punishable under Sections 323, 504, 506 r/w Section 34 of IPC and Section 8 of the Goa Children's Act, 2003 (for short, Act of 2003) and Section 3 & 25 of the Arms Act have been registered against the applicants.

3. The brief facts are that the petitioner Aleixo happens to be the Bhatkar of the complainant Custodio Pereira, the third respondent herein. The fourth respondent is the son of the third respondent. The fourth respondent is a teacher and is conducting tuition classes at his house. As per the complaint lodged by the third respondent, on 16/12/2015 he was sick. At around 9.45 p.m., the complainant was sitting outside his house when the petitioner Aleixo was seen coming towards his house. It was alleged that the petitioner Aleixo started hitting Milroy and the students who had gathered for tuition. It was also alleged that Aleixo removed his rifle and started chasing the students, "firing all over", alongwith the petitioner Diago. It was also alleged that the petitioner Aleixo hit the complainant with a chair and slapped him and abused him and his family members. On such a complaint the offence came to be registered as aforesaid and investigation is stated to be in progress.

4. Indisputably an application Stamp No.4055/2015 filed by the petitioner Aleixo seeking anticipatory bail was rejected by this Court on 12/01/2016. The petitioner Aleixo had approached the Hon'ble Supreme Court in SLP (Criminal) No.839/2016 and as per the order dated 3/02/2016, the SLP is dismissed.

5. We have heard the learned Counsel for the petitioners and the learned Additional Public Prosecutor for the respondent no.1.

6. It is submitted on behalf of the petitioners that the petitioner Aleixo is taking up matters in public interest in general and for protection of environment in particular. It is submitted that on the basis of an application made by the petitioner Aleixo, the National Green Tribunal (NGT), Pune Bench has passed certain order directing demolition of private shacks. In short, it is contended that the prosecution of the petitioners and the complaint lodged is motivated and filed with an ulterior motive by vested interests.

7. The learned Counsel has then pointed out the letter dated 20/12/2015 signed by the third and the fourth respondent in which they have stated that they are withdrawing the complaint as according to the third respondent his signature was obtained on some blank paper and without his consent or knowledge the complaint was drafted by police officials of Verna Police Station. He, thus, submits that the very basis for initiation and registration of the offence falls through.

8. The learned Counsel has thereafter pointed out to a letter

dated 25/12/2015 written by Police Inspector of Verna Police Station which is addressed to Mrs. Lilia Martins Pereira, who is the mother of the petitioner Aleixo Pereira. It is pointed out on the basis of this communication that PSI Anand Shirodkar along with police staff was present on the spot on 16/12/2015 and, as such, it is improbable that the petitioners had indulged into any such offence. The learned Counsel has also pointed out that the Police Station of Verna has no territorial jurisdiction to register the FIR and to conduct investigation. The learned Counsel has placed reliance on the decision of this Court in Mr. ***P. Ravi V/s. Police Inspector Pernem & Anr.*** reported in ***2016 (1) GLR 118*** and the decision of the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. V/s. Ch. Bhajan Lal and others*** reported in ***AIR 1992 SC 604***. It is submitted that the prosecution case and the allegations are highly improbable and the Complaint/FIR deserve to be quashed.

9. The learned Public Prosecutor has referred to statements of some witnesses as also the medical report of Milroy in order to point out that there is prima facie material against the petitioners and it cannot be said that the complaint as it stands does not make out ingredients of any offence. The learned Public Prosecutor has also pointed out to certain circumstances in order to submit that the

petitioner Aleixo is not cooperating with the Investigating Agency. The learned Public Prosecutor places reliance on a full bench decision of this Court in the case of *Abasaheb Yadav Honmane V/s. State of Maharashtra & Anr. reported in 2008 ALL MR (Cri) 952*, in order to submit that unless the case falls in either of the three categories as stated in Section 482 of the Criminal Procedure Code the complaint cannot be quashed. The learned Public Prosecutor has also placed reliance on the decision of *Mrs. Shalu Agarwal & Ors. V/s. State of Maharashtra & anr. reported in 2014 ALL MR (Cri) 4869* in order to submit that Section 156(1) r/w Section 181 of the Criminal Procedure Code does not restrict the jurisdiction of the Investigating Agency to investigate complaint even if it did not have territorial jurisdiction to do so.

10. We have given our anxious considerations to the rival circumstances and the submissions made. The principles applicable to the exercise of jurisdiction under Article 226 of the Constitution of India and/or Section 482 of the Criminal Procedure Code for quashing of a complaint/FIR or criminal proceedings are no longer res integra. The Hon'ble Apex Court in the case of *Bhajan Lal* (supra) has laid down the following guidelines for exercise of such power which read thus:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. In the case of State of ***Maharashtra and Ors. V/s. Inshwar Piraji Kalpatri & Ors.*** reported in ***1995 STPL (LE) 20811 SC***, it has been held in para 22 that question of malafides in a given case may not be relevant at all if the ingredients which establish the commission of the offence or the misconduct (as that case arose out of a prosecution under Section 5(2) r/w Section 5(1)(a) of the Prevention of Corruption Act, 1947) exist and in that case the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. It has been held that the power under Section 482 Criminal Procedure Code has to be used sparingly and only when extraordinary circumstances and exceptional case for the exercise of such power is made out.

12. In ***R. Kalyani V/s. Janak C. Mehta & Ors.*** reported in ***(2009) 1 SCC 516***, again the similar principles have been reiterated. In the case of ***M/s. Medchi Chemicals & Pharma Pvt. Ltd. V/s. M/s. Biological E. Ltd. & Ors.*** reported in ***2000 SAR (Criminal) 409***, it

has been held that in the matter of exercise of High Court's inherent powers the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of Court. The Hon'ble Apex Court has considered its earlier decision in the case of ***L.V. Jadhav V/s. Shankarrao Abasaheb Pawar*** reported in ***AIR 1983 SC 1219*** in which it has been held that such powers are meant to be exercised sparingly and with circumspection, when there is reason to believe that the process of law is being misused to harass a citizen.

13. It can thus be seen that the principles on the basis of which powers under Section 482 of Criminal Procedure Code can be exercised to quash a complaint/FIR or a prosecution are fairly well settled. The difficulty however arises in the application of these principles to the facts and circumstances of the case. It is trite that the powers for quashing an FIR or criminal prosecution are by way of exception and the normal rule would be that the investigating agency is allowed to proceed and law is allowed to take its own course.

14. We find that the case of ***Mr. P. Ravi*** (supra) turned on its own facts. In that case, it was fairly submitted on behalf of the State that the Court may pass appropriate orders in so far as the offence

under Section 8 of the Act of 2003 is concerned. Thus, in so far as the question of offence under Section 8 of the Act of 2003 is concerned, the case not only turns on its own facts but also proceeds on the basis of a concession on behalf of the State.

15. Coming back to the present case, it appears that there is some dispute between the parties as the complainant Custodio Pereira is a mundkar of the petitioner Aleixo Pereira. It is usually said that enmity is a double edged weapon and would not lead to any conclusion either in favour of the prosecution or the accused, at least, at the stage of consideration of a prayer for quashing of an FIR/complaint and when the investigation is still in progress. Therefore, we do not propose to go into this aspect in the present petition.

16. In so far as the ground, about the petitioner having taken up public cause for protection of environment and having obtained some orders for demolition of the private shacks and the complaint being an outcome of the general animosity arising against the petitioner Aleixo, is also in our view, not sufficient to quash the FIR/complaint. These are essentially matters which will have to be gone into at the

trial, if at all the charge sheet is filed. At present, the offence is still under investigation and it would be too early to take any view of the matter, lest it may either prejudice the prosecution or the accused, at a later stage. We do not propose to do that, as it is neither necessary nor appropriate.

17. This takes us to the ground about alleged withdrawal of the complaint by the third and fourth respondent vide letter dated 20/12/2015. From the perusal of the order passed by this Court dated 12/01/2016 in application under Stamp No.4055/2015 it appears that this ground was raised but has not found favour with this Court. The relevant observations can be found in para 9 and 10 of the order which are reproduced as under:

9. I have already reproduced earlier substance of the allegations made in the complaint filed against the applicant. These allegations, as seen from other evidence so far collected, have prima facie substance in them and show that they are, prima facie, serious in nature. The applicant has prima facie consciously indulged in some acts which caused annoyance, hurt, indignation to others and also created a situation of fear for the students who were attending the tuition class. The applicant had not only prima facie hurled abuses but also indulged in violent behaviour which culminated in firing of gun shots in the air. Firing of gun shots in the presence of school children is serious as it has a tendency to traumatize, and endanger safety of, children as envisaged under section 8 of Goa Children's Act. The applicant, is

denying the fact that he owns, possesses and uses any firm arm. But, mere denial is not enough and in fact, would justify further interrogation of applicant. The applicant also submits that he presented himself to the police on 26/12/2015 and was accordingly interrogated by the police. While the prosecution does not dispute the fact of attendance and interrogation, it submits that the attitude of the applicant was not of a cooperative accused and that is the reason why the police are now seeking his arrest in the present case. In such a case, I am of the view that further interrogation of the applicant and even custodial, would be necessary provided, there is also available some more material to reassure that it is necessary for free and fair investigation of the case. Such other material can be seen in the statements of other witnesses recorded by police. These other witnesses reiterate what is alleged in the complaint and at this stage, there is no reason for me to not accept them at their face value. So, I find that custodial interrogation of the applicant to be necessary.

10. The complainant as well as his son, it appears from the copies of the letters dated 20/12/2015 filed on record of this application, have sought to virtually withdraw the complaint filed against the applicant. If contents of these letters are accepted, all the allegations made in the complaint would become suspect in the eye of law. But, that does not seem to be the case now as there are other witnesses who are making the same allegations against the applicant and they are eye witnesses for the whole or part of the incident. They have not withdrawn their statements. This is revealed from the perusal of the case diary. Therefore, the letters sent by the complainant and his son to the police station on 20/12/2015, at this stage of the case, cannot be given much importance and this is also for the reason that the complainant is ultimately a mundkar of the applicant. This is something which would have to be considered on its own merits when the case comes

for trial before the Children's Court and till that happens, this Court would be constrained to go by the prima facie worth of the material collected by the police during the investigation. I have already found that there is prima facie substance in the allegations made against the applicant. These findings, however, would have no bearing upon the merits of the case.

(Emphasis supplied)

18. As noticed earlier, the petitioner Aleixo had unsuccessfully challenged the dismissal of the application for anticipatory bail before the Hon'ble Apex Court. Having regard to the other material which has been collected during the course of the investigation (as noticed by this Court), we are not inclined to accept the contention based on withdrawal of the complaint by the respondents no.3 & 4, at this stage. We find that the matter needs to be investigated and the contentions about the alleged withdrawal will have to be left open to be agitated at an appropriate stage at the trial.

19. This takes us to the submission about the allegations and the incident being improbable. The Hon'ble Apex Court in the case of ***Bhajan Lal*** (supra) has inter alia held that where the allegations made in the FIR or complaint, are so absurd and inherently improbable that on the basis of such allegation, no prudent person can ever reach a just conclusion that there is sufficient ground for

proceeding against the accused, that complaint/FIR or the proceedings, as the case may be, can be justifiably quashed.

In this regard, reliance is placed on behalf of the petitioners on a letter dated 25/12/2015. A perusal of the said letter which is addressed by PI of Verna Police Station to Mrs. Lilia Pereira, it appears that the said letter was with reference to a complaint lodged by said Lilia Pereira alleging the incident to have happened on 16/12/2015 at 22.15 hrs. while the present FIR arises out of an alleged incident dated 16/12/2015 which has occurred at 21.45 hrs. A perusal of the said letter further reveals that PSI Anand Shirodkar with his staff had visited the alleged place i.e. near the house of Custodia and Milroy at Uttorda on account of information about an incident of fighting being received at Verna Police Station. Prima facie at this stage, the letter does not indicate that PSI Anand Shirodkar of Verna Police Station along with staff was present at the spot (or could be present as such) at 21.45 hrs. on 16/12/2015 inasmuch as he had visited the spot on account of information about the incident which had allegedly occurred at 22:15 hrs. We would hasten to add that we are not expressing any final opinion or the conclusion in the matter. The letter is being examined (as on behalf of the petitioner reliance was placed on the same), for the limited

purpose to find out whether a case for quashing of the FIR/complaint is made out or not. The submission based on the said letter does not commend to us.

20. This takes us to the last submission about the Investigating Officer of Verna Police Station lacking territorial jurisdiction. In the case of *Mrs. Shalu Agarwal & Ors.* (supra), this Court has inter alia held that Section 156(1) of Criminal Procedure Code does not restrict the jurisdiction of the Investigating Agency to investigate complaint even if it did not have territorial jurisdiction to do so.

We are not holding either way as to whether Verna Police Station has territorial jurisdiction or not. We only find that, at this stage, on the basis of any such contention the complaint/FIR cannot be quashed.

21. In the result, the petition is without any merit and is hereby dismissed. Rule is discharged.

NUTAN D. SARDESSAI, J.

C.V. BHADANG, J.

NH/-