

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO.105 OF 2015.

Shri Minguelino D'Costa, son of
Pascoal D'Costa, aged 70 years,
businessman, Indian National,
resident of Khari Kantem, near
Forest Colony, Sanquem-Goa.

..... Petitioner.

Versus

1. State of Goa, through its
Chief Secretary, having office
at Secretariat, Porvorim,
Bardez - Goa.

2. The Police Inspector,
Sanquem Police Station,
Sanquem - Goa.

3. Shri Michael G. Fernandes,
son of Benedito Fernandes,
of major age, Indian
National, resident of House
No.28/B, Taripanic, Sanquem
- Goa.

..... Respondents.

Mr. D. Pangam, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondents no.1 and 2.

Mr. R. G. Ramani, Advocate for the respondent no.3.

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

Date: 14th March, 2016.

ORAL JUDGMENT (Per K. L. Wadane, J.)

Heard Mr. D. Pangam, learned Counsel appearing for the
petitioner, Mr. S. R. Rivankar, learned Public Prosecutor appearing for

the respondent nos.1 and 2 and Mr. R. G. Ramani, learned Counsel appearing for the respondent no.3.

2. Rule.

3. Heard forthwith with the consent of the learned counsel appearing for the respective parties. The learned Additional Public Prosecutor waives notice on behalf of the respondent nos.1 and 2 and Mr. R. G. Ramani, learned Counsel waives notice on behalf of the respondent no. 3.

4. The present Writ Petition is filed by the petitioner seeking direction to quash and set aside the impugned FIR No. 19/2014 dated 8.8.2014.

5. Brief facts of the case may be stated as follows:-

The petitioner is a co-owner in possession of a property, bearing survey no. 67/0 known as "TARIPANTO" situated at village Sanquem (hereinafter referred to as the "suit property"). The suit property corresponds to new survey nos.60/1, 64/1, 67/0 and 68. The petitioner purchased the above suit property by sale deed dated 17.2.2004 from the predecessor in title namely one Mrs. Silvia Rebeiro Miranda; (2) Mrs. Edna Miranda e Souza, (3) Mr. Bruno Dias D'Souza and (4) Miss Maria Margarida Adeliade Rebeiro Correa de Graca Miranda alias Maria Margarida Miranda. Thus, the petitioner is

absolute owner in possession of the suit property. The petitioner has subdivided the suit property and as of now has sold 60 plots from the suit property to the various persons. The respondent no. 3 claims to be agricultural tenant of the portion admeasuring 12125 square metres from survey no. 67/0. There is a litigation going on between the predecessor in title of the petitioner and the petitioner on one hand and the respondent no. 3 on the other hand.

6. The reference is required to be made to the litigation between the petitioner's predecessor in title and the father of the respondent no. 3 bearing Special Civil Suit No.27/1977. In the aforesaid suit, the predecessor in title of the petitioner had applied for application for temporary injunction. The said application was rejected holding that predecessor in title of the petitioner are not in possession of the suit property. The petitioner's predecessor in title preferred Civil Appeal No. 52/1998 before the Additional District Judge. The learned Additional District Judge by judgment and order dated 17.3.1978 was pleased to hold that the petitioner's predecessor in title have established their possession over the suit property. The Additional District Judge further held that the father of the respondent no. 3 failed to establish possession over the suit property. There is specific finding recorded that the predecessor in title of the petitioner are in possession of the suit property.

7. The respondent no. 3 filed an application under Section 7

of the Goa Agricultural Tenancy Act for declaring him as a tenant of the suit property along with an application for temporary injunction under Section 8A of the Goa Agricultural Tenancy Act. Mamlatdar was pleased to reject the ad-interim relief sought by the respondent no. 3. Thereafter the Mamlatdar was pleased to pass an order of status quo, therefore, the petitioner preferred Tenancy Revision before the Deputy Collector. The Deputy Collector was pleased to set aside the order of status quo passed by the Mamlatdar. The respondent no. 3 herein had challenged the said order of the Deputy Collector before the Administrative Tribunal and the same is pending before the Administrative Tribunal.

8. It is the contention of the petitioner that the respondent no. 3 is trying to interfere with the suit property as a result, the petitioner has lodged several complaints to the police station, Sanquem. The respondent no. 3 is also lodging false and frivolous complaint against the petitioner. The respondent no. 3 is trying to trespass into the suit property and commit theft of cashew nuts. FIR bearing No. 19/2014 is registered against the petitioner on the false complaint filed by the respondent no. 3.

9. During the course of arguments Mr. Pangam, learned Counsel appearing for the petitioner has argued that there is civil dispute between the parties regarding the suit property. The respondent no. 3 is claiming to be tenant of the suit property and such

claim is pending for adjudication before the appropriate forum.

10. During the course of arguments, Mr. Pangam, learned Counsel has pointed out that investigating officer has conducted the investigation and since there is no evidence on record against the petitioner, the investigating officer has submitted a report "A" summary, inspite of the fact that there is absolutely no evidence against the petitioner, FIR came to be lodged on the basis of the opinion given by the concerned Public Prosecutor. Mr. Pangam, further points out that opinion of the concerned Public Prosecutor is contrary to the facts and the evidence. There is no evidence on record to show that the respondent no. 3 is in possession over the suit property.

11. Mr. S. R. Rivankar, learned Public Prosecutor during the course of arguments has argued that during the investigation witnesses have not stated anything against the petitioner, therefore, the investigating officer submitted report "A" summary.

12. On perusal of the opinion given by the Public Prosecutor, it appears that he has opined that the respondent no. 3 claim's to be deemed tenant of the suit property and he is in factual possession of the suit property. To substantiate his claim he has produced various documents and the judgment of the Apex Court wherein it is seen that all the Courts have up held his contention regarding his factual

possession and the petitioner is restrained from interfering with the suit property surveyed under no. 67/0.

13. We have scrutinized the entire record and we do not find any such finding regarding possession of the suit property as has been opined by the public prosecutor. On scrutiny of the record, the public prosecutor has further opined that the name of the complainant is not entered in form I and XIV as tenant as his case is pending before Mamlatdar. He further opined that the petitioner purchased the suit property knowing fully well that it is a disputed property. Respondent no. 3/complainant lodged the complaint to the Police Station, Sanquim against unknown person alleging that he is tenant over the property surveyed under No. 67/0 measuring 12125 square metres at village Sanquim. He has filed an application under Section 7 of the Agricultural Tenancy Act before the Mamlatdar. Therefore, he is deemed purchaser of the aforesaid property of cashew garden and other fruit bearing trees and the complainant is in possession and enjoyment of the suit property. On 24.5.2014, he lodged complaint to the Police station against unknown person for nailing of cashew trees at the bottom. On making enquiry, the complainant/respondent no. 3 came to know that present petitioner and one Mario Fernandes illegally trespassed in his property and committed mischief by nailing all the cashew trees at the bottom.

14. Looking to the opinion given by the concerned Public

Prosecutor, it appears that his information is neither based upon the material on record more particularly to show the possession of the respondent no.3 nor it is brought on record that the petitioner and others are restrained from interfering with the alleged possession of the respondent no. 3 over the suit property.

15. We have also gone through the say submitted by the investigating officer. During the investigation four witnesses who are claiming to be tenant over the suit property have been examined however, during their statements they have not stated anything against the petitioner in reference to the alleged offence, so consequently, investigating officer has submitted "A" final summary to the Judicial Magistrate, First Class, Sanquem.

16. On perusal of the contents of the FIR , it reveals that same was lodged against unknown person and during the investigation the witnesses examined by the investigating officer have not stated anything against the present petitioner, therefore, there is absolutely no evidence against the petitioner.

17. The dispute between the property appears to be of a civil nature. Power under Section 482 of Cr.P.C. to quash and set aside FIR or criminal proceedings has to be used sparingly and only for the purpose of preventing abuse of the process of any Court or otherwise to secure ends of justice. Whether a complaint discloses a criminal

offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by this Court. Complaint disclosing civil transactions may have a criminal texture. In the present case basically there is no prima facie evidence to show that the respondent no. 3 is in possession of the suit property. Therefore, the question of criminal trespass does not arise.

18. Here in the present case, we do not find anything against the present petitioner. Neither the complainant nor the other witnesses were able to tell who has committed offence of mischief or criminal trespass. Therefore, we feel that the dispute which is essentially of a civil nature is given a cloak of the criminal offence. The dispute between the parties is with regard to the tenancy of the agricultural land and claim of the rival parties are under consideration before the appropriate forum and we think that the appropriate Court will take care of the thing. In such situation, if civil remedy is available and is, in fact adopted by the parties, therefore, we should not hesitate to quash the criminal proceedings to prevent abuse of the Court.

19. Considering the overall circumstances of the facts, there is nothing on record to connect the present petitioner with the alleged crime, therefore, continuation of the criminal proceedings becomes meaningless. Hence, Writ Petition is allowed. The FIR bearing No. 19/2014 dated 8.8.2014 is quashed and set aside.

20. Rule made absolute in above terms.

K. L. WADANE,J.

F. M. REIS,J.

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