

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 51/2016

- 1] Antonio Xavier Gomes Pereira
62 years, Retired
r/o Vivenda Gomes Pereira,
Gomes Pereira Road,
Panaji - Goa;
- 2] Aravin Gomes Pereira
60 years, Service
r/o Vivenda Gomes Pereira,
Gomes Pereira Road,
Panaji - Goa;
- 3] Rui Gomes Pereira
30 years, Professional,
r/o Vivenda Gomes Pereira,
Gomes Pereira Road,
Panaji – Goa.

Petitioners

Versus

- 1] State of Goa,
Through the Public Prosecutor,
High Court, Panaji, Goa;
- 2] Police Inspector,
Panaji Police Station,
Dist – North Goa, Goa.
- 3] Percylou Coutinho
Ground floor,
Vivenda Gomes Pereira,
Gomes Pereira Road
Panaji, Goa.

Respondents

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Shri S.G. Bhobe, Advocate with Ms. N. Pimenta, Advocate
for the petitioners.

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

Shri S.G.Desai, Senior Advocate with Shri A.V.Pavithran, Advocate for the respondent no.3.

**CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ
RESERVED ON : 10.08.2016.
PRONOUNCED ON : 10/10/2016**

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

1. Heard Shri S.G.Bhobe, learned Advocate for the petitioners who contended on inviting attention to the FIR that Section 341 IPC alone was a cognizable offence unlike the other offences being non-cognizable in nature. The complaint did not at all disclose the offence of wrongful confinement and therefore it was a fit case to quash and set aside the FIR No.62/2016 registered under Sections 341, 323, 427, 504 and 506 read with Section 34 IPC. He placed reliance in **Shripad Kulkarni and others Vs. State of Goa and another** [Criminal Writ Petition No.80/2013] and **Joao C.Pereira and another Vs. State of Goa and others** [CDJ 2016 BHC 607] to substantiate his case. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the respondents no.1 and 2 contended that the investigation revealed that the CC TV footage to which a reference was made in the complaint did not give any details except the arrival of the car in question. The inmates of the house too were not forthcoming on

the incident and hence left the matter to the Court for appropriate orders.

2. Shri S.G. Desai, learned Senior Advocate on behalf of the respondent no.3 contended that the complainant was restrained within the car on a reading of the complaint and submitted that the offence under Section 339 IPC of wrongful restraint was amply made out and there was no reason to quash the FIR. There was a duty cast on the Police to register an FIR and in which context he relied in **Lalita Kumari Vs Government of Uttar Pradesh and others** [(2014) 2 SCC 1], **Prashant Jhunjhunwala Vs Union Territory of Daman and Diu** [2009 (3) BCR (Cri) 116], **Rajesh Bajaj Vs. State NCT of Delhi** [1999(3) SCC 259], **T.Vengama Naidu Vs. T. Dora Swamy Naidu and Ors.** [(2007) 12 SCC 93], **Nazeem A.K. and others Vs. State of Goa** [Criminal Writ Petition No.22/2015] and submitted that the judgment passed by this Court in **Shripad Kulkarni** (supra) was clearly distinguishable. The relations between the parties were otherwise strained and considering the overwhelming material on record, there was no reason to quash the FIR and the petition had to be dismissed.

3. The petitioners had filed the complaint to the respondent no.2 to the effect that the respondents had come to attack her

and wrongfully restrained her apart from trying to molest her. The incident had taken place outside her residence while she was parking her car when the named persons came running towards her car with an intention to attack her. They then started banging her car windows and car windshield. At that time she requested them to talk to her and explain the matter. However, the said named persons forcefully banged the car door on her shoulder. They had used abusive words and gave bad words to her. At that time they banged the car door on her shoulder and her mother who came to save her was also grievously hurt as the car-door hit her leg. This incident as per her version took place between 19.30 to 20.00 hours and was recorded in the CC TV Camera which belonged to the said persons. The entire incident was witnessed by her mother and her friend who was present in the house. There was no singular dispute that there were civil proceedings between the parties and their relations interse was strained. Besides the eviction proceedings were filed against the respondent no.3 and her family under the Goa Building Lease, Rent and Eviction Control Act, 1968. It is therefore to be seen in the backdrop of these facts and the law laid down by the Apex Court and this Court whether a case has been made out for quashing the FIR particularly under Section 341 IPC.

4. Section 339 IPC which is the only offence being

cognizable reads thus:

“Section 339 - Wrongful restraint-Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception – The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.”

Section 341 IPC reads thus:-

“Section 341. Punishment for wrongful restraint-Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one thousand rupees, or with both”.

Therefore, a bare reading of Section 339 IPC would show that it is incumbent on the party alleging the offence of wrongful restraint to show that he had been voluntarily obstructed by any person so as to prevent him from proceeding in any direction in which that person has a right to proceed.

5. In **Lalita Kumari** (supra), a Five Judge Bench of the Hon'ble Apex Court held that the registration of an FIR is mandatory on the receipt of the information disclosing a cognizable offence as a general rule. It spelt out the situations or

the cases in which a preliminary inquiry is permissible and laid down the scope of and safeguards to be followed in cases where such preliminary inquiry (time-bound) was permissible. In other words, the registration of an FIR was mandatory under Section 154 CrPC if the information disclosed the commission of a cognizable offence and no preliminary inquiry was permissible in such a situation and being the general rule had to be strictly complied with. There can be no dispute with this proposition culled out by the Hon'ble Apex Court. But the moot question is whether such registration of an FIR was warranted in the circumstances of the case and if at all whether the petition would lie for quashing of the proceedings.

6. **Rajesh Bajaj** (supra), lodged an FIR with the Police for the offence punishable under Section 420 IPC. A Division Bench of the Delhi High Court quashed the FIR on the premise that the complaint did not disclose the offence reminding themselves that the jurisdiction under Article 226 of the Constitution or Section 482 CrPC should be exercised sparingly and with circumspection for quashing the criminal proceedings. Nevertheless, the learned Judges found that the case on hand could not pass the test laid down by the Hon'ble Apex Court in **State of Haryana v. Bhajan Lal** [(1992) Suppl.1 SCC 335] and feeling aggrieved the appellant questioned the said course of action adopted by the

High Court and filed the special leave petition.

7. In **Rajesh Bajaj** (supra), the appellant had carved a case that he belonged to a company which manufactured and exported ready-made garments. On 15.11.1994 the fifth respondent as the Managing Director approached him for the purchase of ready-made garments of various kinds and induced him to believe that he would pay the price of the said goods on receiving the invoice and promising to make the payment within fifteen days from the date of invoice of the goods which the complainant would despatch to Germany. The appellant believed the aforesaid representation as true and on that belief despatched goods worth 4,46,597.25 Deutsch Marks. The respondent got the goods released on receipt of 37 different invoices and sold them to others and paid only a sum of 1,15,194 Deutsch Marks. The appellant alleged in the complaint that the respondent induced him to believe that he was a genuine dealer, but actually his intentions were not clear. One of his representatives had gone to Germany for realising the amount on the strength of an understanding reached between them but who did not honour even that subsequent understanding and later he learnt about the modus operandi which the respondent had adopted with respect to the other certain manufacturers who too were duped by him and lodged the complaint.

8. In **Rajesh Bajaj** (supra), the Hon'ble Apex Court found that the learned Judges of the High Court had considered the ingredients of Section 415 IPC, scanned the complaint and arrived at a finding that there was nothing in the complaint to suggest that the accused had a dishonest or fraudulent intention at the time of the export of goods. It was observed by Their Lordships that it was not necessary that the complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence alleged by him nor was it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Besides, splitting up of the definition into different components of the offence to make a meticulous scrutiny whether all the ingredients had been precisely spelt out in the complaint was not the need at this stage and if factual foundation for the offence had been laid in the complaint, the Court should not hasten to quash the criminal proceedings during the investigation stage merely on the premise that one or two ingredients had not been stated in detail. In the circumstances, therefore, it was held that the power of quashing of the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare case as the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or

otherwise of the allegations made in the FIR or the complaint and the High Court should not have quashed the FIR.

9. **Prashant Jhunjunwala** (supra), prayed in his petition under Article 226 of the Constitution of India and under Section 482 CrPC that the FIR registered at Daman P.S. be quashed and set aside and for other consequential reliefs. In that context, the learned Judges examined the contents of the complaint which was registered under Section 420 read with Section 120-B IPC at P.S.Daman against the petitioner and five others, heard the learned counsel appearing on his behalf who contended that a purely civil dispute had been given the colour of a criminal offence and that Criminal law could not have been set in motion on those facts. Moreover, the complainant-company had filed a suit in the Delhi High Court after filing the complaint which was pending for adjudication and therefore the suit must be allowed to be prosecuted and the criminal complaint had to be quashed. Their Lordships of this Court considered the contentions of the rival parties, referred to the judgments of the Apex Court in *T.Vengama Naidu* (supra), as also that in *Rajesh Bajaj* (supra), and observed in their opinion that whether a complaint discloses a criminal offence or it involves only a civil dispute depends on the facts and circumstances of each case.

10. In **Prashant Jhunjunwala** (supra), the Court observed that a complaint may have a civil profile but it may also have overwhelming criminal overtones when a Criminal Court cannot shut its doors to it. Besides merely because a complaint involves a commercial transaction, it cannot be inferred that it contains a civil dispute if the ingredients of a criminal offence are present and on a consideration of the averments made in the complaint found that the allegations made in the complaint taken at their face value were not such that they did not prima facie disclose any offence. The ingredients of cheating were very much present and it was not possible to hold at that stage that the complaint was filed with malafide intention to wreck vengeance. The power under Section 482 CrPC could not be used to stifle a legitimate investigation based on facts prima facie indicating the commission of an offence such as those averred in the complaint and rejected the petition.

11. In **T. Vengama Naidu** (supra), the order passed by a learned Single Judge of the Andhra Pradesh High Court was challenged in appeal pursuant to which he had allowed the Criminal Petition filed by the respondent and quashed the FIR registered against them. The appellant had filed a private complaint against the respondents which was sent for investigation under Section 156(3) Cr.P.C. to the Police and

whereupon a criminal case was registered for the offences punishable under Sections 464, 423 and 420 read with Section 34 IPC. Admittedly, the investigation was not complete and while it was in progress, the respondents filed a petition under Section 482 CrPC before the High Court for quashing of the FIR which was lodged on the basis of the complaint as well as the investigation. Their Lordships examined the FIR in which the complainant had complained that he was an absolute owner of the vacant site in Survey no.479/2 situated at Tirupati jointly alongwith one Dammalapati Naidu. He had executed a General Power of Attorney in favour of the first respondent but it was cancelled by issuing a legal notice since he was found misusing it.

12. In **T. Vengama Naidu** (supra), it was alleged that the first respondent had filed a false complaint against the appellant alleging the offences punishable under Sections 447 and 506 read with Section 34 IPC in which the respondent no.2 was shown as one of the witnesses. It was alleged that inspite of cancellation of the General Power of Attorney in 1997, the first respondent executed a registered Sale Deed dated 16.6.2000 in favour of the second respondent and the respondents no.3 to 6 were shown as the witnesses therein. It was therefore alleged that both the accused persons were well aware that the first respondent did not own the land and could not have executed

such a document and thereby had cheated the complainant and besides the respondent no.1 had also dishonestly executed the Sale Deed without any authority and made a false document.

13. In **T. Vengama Naidu** (supra), while the FIR was under investigation pursuant to the orders of the Magistrate under Section 156(3) CrPC, the only two accused being the respondents had filed a petition under Section 482 CrPC for quashing of the same, which was allowed by a learned Single Judge of the High Court holding that it was a case of a civil profile and none of the ingredients that constitute the offences punishable under Sections 464, 423 and 420 read with Section 34 IPC were discernible from the said allegations. It was held that the petitioner herein i.e. the original complainant, was the Principal and the first respondent was his Agent and in case an Agent mismanages the property and fails to account for the same, the proper remedy available to the Principal was to file a suit against the Agent for rendition of the accounts. Moreover, if at all the first accused had sold away the property in favour of the second respondent and if at all the offence of cheating was alleged, the aggrieved party would be the purchaser for which a remedy was available under the common law to the complainant to get the property by filing a suit.

14. In **T. Vengama Naidu** (supra), Their Lordships held that there was no dispute that a private complaint was filed before the learned Magistrate who had made it over for investigation under Section 156(3) CrPC and not challenged. The Police had registered a crime probably treating the complaint as the FIR. It was observed that it was settled law that an FIR and the consequent investigation cannot be quashed unless no offence is spelt out from the same and the law in that respect was well settled that the FIR had to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of and there was no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of the allegations. A glance at the FIR suggested that there were serious allegations against both the accused i.e. the respondents no.1 and 2 inasmuch as despite the specific allegation that there was revocation of the General Power of Attorney and inspite of a specific notice to that effect by the complainant to the first respondent, he had gone on dishonestly to execute the Sale Deed in favour of his daughter on the basis of the revoked General Power of Attorney. In their assessment, there was prima facie material to show that the ingredients of the offence complained of were made out and therefore at that stage the High Court could not have quashed the FIR as well as the investigation and allowed the appeal.

15. In **Nazeem** (supra), to which one of us (F.M.Reis, J) was a party, it was held that the High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular a first information report unless the allegations contained therein, even at face value and taken to be correct in their entirety, disclosed no cognizable offence. If the allegations made in the FIR disclosed the commission of an offence, the Court would not go beyond the same and pass an order in favour of the accused to hold the absence of any mens rea or actus reus and rejected the petition. In the brief facts, the respondent no.2 had lodged a complaint at the Cuncolim Police Station alleging that the Unit Sunrise Zinc located at Cuncolim Industrial Estate was involved in the production of copper, zinc and brass from brass dross, copper dross and zinc skimming and generating hazardous waste of a defined quantity. The said company had stopped its operation pursuant to the order of this Court and the possession of the unit and the plots was subsequently taken over by the bank i.e. the accused no.2 who had sold the plots to M/s. Axis.

16. In **Nazeem** (supra), it was found from the inspection that hazardous waste stored at the site in the plot no.L-2 was not covered and kept open to atmosphere and exposed to rain and

some attempts were made to shift the hazardous waste and quantity of stored waste from the plot no.L-3 into the plot no.L-2. The samples of water from one test well located within the plot no.L-2 was collected during the course of inspection and sent for analysis which indicated the concentration values of PH and Cadmium exceeding the prescribed permissible limits for drinking water and accordingly giving rise to the report against the petitioner for the offence punishable under Section 269 IPC and Section 16 read with Section 15 of the Environment (Protection) Act, 1986.

17. In **Nazeem** (supra), this Court while dealing with the petition considered whether the contents of the FIR disclosed the commission of a cognizable offence or not and found from the FIR that there were specific allegations that the hazardous waste stored in the plot no.L-3 was exposed to air. In those set of circumstances, it was observed that the hazardous waste was kept in the plot No.L-2 some of which was open to air and rain apparently attracting the provisions of Section 16 read with Section 15 of the Environment (Protection) Act, 1986 and Section 269 IPC while declining to quash the FIR. All these judgments are clearly distinguishable and cannot substantiate the case of the respondent no.3 to oppose the petition.

18. **Shripad Kulkarni and others** (supra), were the petitions filed by the Management against the State and their Employees. The respondent no.2 served as a Manager, Human Resources, who claimed leave on personal grounds but was not allowed and called to the office on the date of the incident. She claimed that she was handed over a resignation letter to sign which she was coerced to do and lodged a criminal complaint against the petitioners for the offences under Sections 342 and 506 read with Section 34 IPC. The petitioners alleged that no cognizable offence was disclosed in the complaint and therefore the FIR and the consequent chargesheet must be quashed and no criminal trial shall proceed as that would amount to an abuse of the process of the Court. In that backdrop, this Court to which one of us was a party (F.M.Reis, J.) examined the complaint lodged at her instance which was hand-written, signed and submitted to the P.I. Mapusa Police Station in which she had disclosed that she was picked up from her residence by the company vehicle, taken to her office where she was wrongfully confined in a room in the presence of the petitioners and was coerced to sign her resignation letter.

19. In **Shripad Kulkarni** (supra), this Court considered that the persons who had wrongfully confined her were not mentioned and what she had mentioned was the names of the

three persons in whose presence she was confined wrongfully which did not make them the perpetrators of the crime and at the highest made them the eye witnesses. This Court also considered the definition of wrongful confinement contained in Section 340 IPC and in that backdrop examined the complaint and found that the complaint did not show that any person had wrongfully restrained the complainant or who had wrongfully confined her. It was observed that if what she stated was true it would make out a case of coercion and the contract to resign would become voidable at her option and she would be entitled to sue in a Civil Court for declaration and other reliefs upon making out a case of coercion but no penal offence which was cognizable could be disclosed from the complaint.

20. In **Shripad Kulkarni** (supra), this Court had considered the judgment of the Apex Court in **Asmathunnisa Vs. State of Andhra Pradesh** [(2011)11 SCC 259], which had laid down the parameters for the exercise of the inherent powers for quashing the criminal proceedings under Section 482 CrPC being where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings, where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged and where the allegations constitute an offence but there is no

legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. On a consideration of the said parameters and reading of the complaint, this Court came to the conclusion that the petition needed to be granted and quashed the FIR and the chargesheet filed pursuant thereto before the JMFC Mapusa.

21. In **Joao C.Pereira** (supra), to which one of us (Nutan D. Sardessai, J.) was a party, it was held that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused, it was a fit case to quash the FIR. It considered the judgment in **Bhajan Lal** (supra) where the parameters had been laid down for quashing the FIR. In the facts of the case, the respondent no.4 had lodged the complaint alleging that he was knowing one Sairaj Naik i.e. the accused no.1 who was supposed to give a carpet to him. The complainant met the accused at around 20.30 hours asking about the carpet but who refused to give the same and subsequently the complainant and the accused no.1 went on the motorcycle of the complainant to Pacheco Wine Shop at Pacheco Wado, Majorda to see the owner of the shop as he was present at the time of the deal between them. It was during the said time that the accused

no.1 started arguing with the complainant, suddenly became aggressive and hit him with empty beer bottles on his head due to which he sustained injuries and fell down on the ground. He was shifted to the Hospicio hospital, Margao and then to the Goa Medical College, Bambolim where his complaint was reduced to writing by Head Constable Hemant Gaude of the Colva Police Station.

22. In **Joao C. Pereira** (supra), the complainant had obtained a discharge against medical advise on 21.5.2014 barely two days from the night of the incident and was recuperating at home. It was only on 11.6.2014 that he gave a supplementary statement to the Police in which he alleged that the petitioners were present along with the said Sairaj Naik and one Xavier Pereira who had also assaulted him and the reason for not disclosing their names earlier was that he had suffered grievous head injuries with internal bleeding and was unable to recollect the entire incident and thus had failed to name the petitioners and Xavier Pereira in his complaint. One Aleixo Pereira had produced a typewritten statement to the Investigating Officer stating that he had witnessed the entire incident on the night of 19.5.2014 in the full beam of the headlights of his car and came near the injured only after the assailants went away. The learned Judge found that he had neither reported the incident to the

Police nor his statement was recorded by the I.O. much less with any promptitude. The only other witness had stated about the incident seen by him from the wine shop but had not named the petitioners. In those set of the circumstances and considering the principles culled out by the Apex Court in Bhajanlal (supra), it was held that it was a fit case to quash the FIR against the petitioners.

23. Coming to the facts of the case, the respondent no.3 in her complaint had stated that when she was parking her car, the petitioners came running towards her car with an intention to attack her, then started banging her car windows and car windshield. When she requested them to talk to her and explain the matter, they thereafter forcefully banged the car door on her shoulder. This incident including the abusive words given to her were recorded in the CCTV camera belonging to them and witnessed by her mother and her friend. A cursory perusal of her complaint thus reveals on her own showing that there was no obstruction to the respondent no.3 from proceeding in a particular direction. Rather from her complaint, it is borne out that she had herself requested them to talk to her while they were banging on the car windows and windshield and explained the matter and it was not as if they had wrongfully restrained her in the car as it was her case. Though much was said about the

presence of her mother and her friend who had witnessed the incident, however, it has fallen from the learned Public Prosecutor that neither the CCTV footage indicated the details referred to by the complainant on the purported incident nor were the inmates of the house forthcoming to shed light on the incident much less to buttress her case that she was wrongly confined and wrongfully restrained from proceeding ahead.

24. Moreover, it was not in dispute that the eviction proceedings were initiated against the respondent no.3 by the petitioners before the Rent Controller and, therefore, it could not at all be ruled out that the present proceedings were stemming out of the strained relations between them on account of the said eviction proceedings pending before the Rent Controller. The contention of Shri S.G.Desai, learned Senior Advocate for the respondent no.3, therefore, cannot be countenanced that the offence of wrongful restraint was made out from the tenor of the complaint except for her bare statement that she was wrongfully confined and, therefore, considering the law laid down by the Hon'ble Apex Court particularly in Bhajan Lal (supra), there is no basis to continue with the prosecution which would tantamount to an abuse of process of the Court.

25. In the circumstances, therefore, we allow the petition

and quash and set aside the FIR No.62/2016 registered by the North Goa Panaji Police Station under Sections 341, 323, 427, 504, 506 read with Section 34 IPC.

NUTAN D.SARDESSAI, J

F.M. REIS, J

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