

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 59 OF 2015**

Michael Das Does De Mendonca,
Major, residing at H. No. 140,
Bondiem Bhat, Near Taleigao Church,
Taleigao, Ilhas, Goa.

.... Petitioner

Versus

1. Vito Gomes, S/o Marcus Gomes,
54 years of age, married, Indian
National, residing at H. No. 33,
Kerant, Caranzalem, Ilhas, Goa.

2. Urbano Gomes, S/o Marcus
Gomes, 52 years of age,
married, Indian National,
residing at H. No. 33, Kerant,
Caranzalem, Ilhas, Goa.

3. State of Goa, Through Public
Prosecutor, High Court of
Bombay at Goa.

.... Respondents

Mr. U.R. Timble, Advocate for the Petitioner.

Mr. J. Godinho, Advocate for Respondent Nos. 1 and 2.

CORAM:- S.B. SHUKRE, J.

DATE:- 4th FEBRUARY, 2016.

ORAL JUDGMENT:

Heard learned Counsel for the petitioner and learned
Counsel for respondent nos. 1 and 2. None for respondent no.

3-State.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. Learned Counsel for the petitioner, taking me through the impugned judgment and order dated 21.01.2015 has submitted that the learned Additional Sessions Judge is absolutely wrong when he has based his conclusions in the matter on facts which are not appearing on the record of the case. According to him, date of incident has been mentioned in the complaint and witness Anand Babali has also been examined, but the learned Judge found the position to be otherwise.

4. Learned Counsel for respondent nos. 1 and 2 submits that whatever may be the position, fact remains that there is inherent infirmity in the whole proceeding which lies in the date of occurrence of the incident. Two dates of incident, separated by a period of one month, have been stated by the witnesses and so there is a real doubt as to when the incident occurred, so submits the learned Counsel for respondent nos. 1 and 2.

5. On perusal of the impugned judgment and order and other material which is forming part of the paper book, with the assistance of learned Counsel for both sides, it appears that the learned Counsel for the petitioner is right when he says that the learned Additional Sessions Judge has committed a mistake in observing that the complainant does not state the date of the incident and that the material witness Anand Babali has not been examined by the petitioner. The complaint in question indeed discloses the date of incident as 13.02.2013 and record also shows that Anand Babali, a witness of the petitioner, has been examined in support of the contentions raised in the petition. However, the matter does not end here. Upon overall consideration of the complaint and the evidence available on record, I find that the infirmity about the date of incident created by two sets of witnesses, one set consisting of the complainant and the other set consisting of two witnesses, namely Mantesh Ramannawar and Anand Babali, goes to the root of the matter. According to the complainant, the incident occurred on 13.02.2013 and the version of the other set of witnesses discloses that the incident occurred on 13.03.2013. This variance in the date of incident is material and now, it cannot be said as to when the incident occurred.

6. Learned Counsel for the petitioner submits that such variance in the date of the incident has to be understood by taking into consideration the background of the witnesses of the petitioner. He submits that these witnesses are labourers who are not expected to be well conversant with law and do not understand importance of dates. He submits that if their entire evidence is considered, one would know that they are supporting the version of the complainant. Such argument cannot be accepted as there are affidavits filed by learned Counsel for respondent nos. 1 and 2 in which these witnesses have stated the date of 13.03.2013 as the date when the incident has occurred. The copies of these affidavits produced before the Court are taken on record and for the purpose of identification marked as document 'X' and 'Y'. These affidavits show that both these witnesses have stated on oath that the date of incident is 13.03.2013. Affidavit filed in English cannot be said to be a product of any ignorance of the labourers, which is sought to be attributed to them by the learned Counsel for the petitioner.

7. In the result, this is not a fit case for making any interference with the impugned order in exercise of extra

ordinary jurisdiction of this Court under Article 227 of the Constitution of India. Writ petition deserves to be dismissed. Writ Petition stands dismissed.

8. Rule is discharged.

S. B. SHUKRE, J.

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