**IN THE HIGH COURT OF BOMBAY AT GOA.**

**CRIMINAL WRIT PETITION NO.45/2014.**

Vaman Narayan Ghode,
68 years of age,
Son of late Narayan Vaman Ghode,
Widower,
Resident of H.N.398, Comba,
Margao, Salcete Goa. Petitioner

Versus

1. Officer In Charge
Margao Town Police Station
Margao - Goa.

2. Vinda Kamat Mhamai,
30 years of age,
Wife of Prasad Kamat Mhamai,
Resident of Mhamai Niwas,
Near Govt. School,
Baina, Vasco da Gama, Goa. Respondents.

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Shri Harshad Arsekar, Advocate for the petitioner.
Shri S.R. Rivankar, Public Prosecutor for the Respondent no.1.
Shri Ryan Menezes, Advocate for the Respondent no.2.

**CORAM : F.M.REIS & NUTAN.D.SARDESSAI, JJ.**
**DATED : 3rd OCTOBER, 2016.**

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

1] Heard Shri H. Arsekar, learned Advocate for the petitioner, Shri S.R. Rivankar, learned Public Prosecutor for the respondent no.1 and Shri R. Menezes, learned Advocate for the respondent no.2-original complainant.

2] Rule. Rule made returnable forthwith with the consent of the learned counsel appearing for the parties. Shri

S.R.Rivankar, learned Public Prosecutor waives service on behalf of the respondent no.1 and Shri R. Menezes, learned Advocate waives notice on behalf of the respondent no.2.

3] Shri H. Arsekar, learned Advocate for the petitioner contended that the respondent no.2 apparently at the instance of her husband and supported by his other daughter and her husband were motivated by greed and precipitated the FIR against him. He had lost his wife on 7.5.2012 and since then he was surviving on his own and totally dependent on his belongings and assets which he had collected during his lifetime. The respondent no.2 alongwith her sister Veena had filed a Suit for injunction before the Civil Judge Junior Division at Margao against the petitioner and his third daughter Vibha Naik and son-in-law alleging that upon the death of his wife, they had succeeded to the movable and immovable properties of their late mother which were acquired by her during her lifetime and that the petitioner was intending to dispose off the estate. The respondent no.2 and her sister Veena had even gone to the extent of making allegations against the petitioner that he alongwith his elder daughter Vibha and son-in-law had dishonestly removed the gold lying in the bank locker of the petitioner. The Civil Court had not granted any ad-interim relief in favour of the respondent no.2 and preferred an appeal before the District Court, Margao which was dismissed by the order dated 3.10.2013. The respondent no.2 not being successful in causing harassment to the petitioner had filed the complaint dated 9.11.2013 against the petitioner as also against his elder daughter Vibha and the respondent no.1 without the application of mind had registered an FIR against the petitioner, his elder daughter and the son-in-law.

4] It was also his contention that the complaint was not only false and frivolous but it did not also disclose the commission of any cognizable offence nor any offence was made out on the basis of such a complaint filed by the respondent no.2. The locker referred to in the suit and also in the complaint belongs to the petitioner alongwith its contents. He had on account of his old-age and the medical condition joined the respondent no.2 as the Co-operator in respect of the locker maintained by him with the Central Bank of India, Margao Branch and taking advantage of that fact, the respondent no.2 was staking a claim to the locker and its contents. The petitioner had been made to suffer for no fault and to undergo physical and mental trauma on account of the frivolous and mischievous proceedings filed by the respondent no.2 alongwith his other daughter. He had provided for the respondent no.2 with all the day to day requirements of life apart from incurring the expenses of her marriage and also parted with the gold ornaments and other gifts as per the culture. He had also given a Maruti Zen Car to the husband of the respondent no.2 at his instance. The Central Bank of India vide its letter dated 20.11.2013 had certified that the Safe Deposit Locker bearing no.121 was opened by the petitioner and his wife on 19.10.1992 and the same was operated by either or survivor. The respondent no.2 independently or with her husband had no claim in respect of the locker which belongs to the petitioner and his wife, since deceased. The complaint as filed by the respondent no.2 is without any basis and does not disclose the commission of a cognizable offence. The respondent no.1 had committed a jurisdictional error in law as well as in facts in order to appreciate a purported complaint which did not disclose the commission of a cognizable offence would not warrant the registration of an FIR. The petitioner was thus entitled to a quashing of the FIR as otherwise its continuance would cause grave prejudice to him and would result in miscarriage of justice if allowed to stand.

5] We have examined the records and materially the FIR which had been registered against the petitioner, his daughter and son-in-law by his other daughter Vinda i.e. the respondent no.2. She had alleged in her complaint that her mother owned several gold ornaments some of which ornaments were gifted to her by relations at the time of her marriage and some were purchased by her from time to time. She was a joint holder of a Safe Deposit Locker in the Central Bank of India, Margao branch along with the petitioner and her late mother and her late mother had kept all her gold ornaments and the sovereigns owned by her in the locker. She had last operated the locker in July 2012 when the key to the locker was brought by the petitioner and when she found that all the gold belonging to her mother was secured in the said locker which was weighing about 200 tolas. It was her grievance in the complaint that there were disputes between father i.e. the petitioner, her elder sister and her husband on the one hand and her younger sister and she on the other in relation to the assets left behind by her mother. During such time, it was confirmed by the petitioner that the gold of her mother still continued in the locker and that he had not operated the locker at any time after July 2012. It was further her grievance in the complaint that her father i.e. the petitioner, elder sister Vibha and her husband started attempts to dishonestly alienate immovable properties belonging to her mother without her consent or that of her younger sister compelling her to file the suit for injunction and the other reliefs. There was an order of the District Court to restrain her father from operating the locker and removing her mother's gold from the locker. Her father had filed reply in Appeal on 18.9.2013 that the locker did not exist as on the date of the filing of the suit and when she approached the Bank she learnt that her father with one female person had operated the locker on 16.8.2013, removed all contents of the locker on the same day and closed the locker. She was the joint holder of the locker and her signature was mandatorily required to enable the closure thereof. The female person accompanying her father had cheated by personation by pretending herself to be the complainant and forged her signature on the said application. It was therefore her grievance against the petitioner, elder sister and brother-in-law that they had hatched a criminal conspiracy to cheat by personation and forged her signature to operate and close the account in her absence and without her consent dishonestly to remove all the contents of the locker including the gold. She had therefore alleged that the offences under Sections 120-B, 380, 403, 417, 419, 421, 424, 465, 468 and 471 read with Section 34 of the IPC were made out and prayed for registering the offence.

6] In the case of **State of Haryana and others V/s Bhajan Lal and others, reported in 1992 Supp (1) Supreme Court Cases 335**, wherein the Hon'ble Apex Court has given categories of the cases in which extraordinary power under Article 226 or the inherent powers under Section 482 of Criminal Procedure Code can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice.

> (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;
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> (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;
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> (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;
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> (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."

7] In **Sussanne Khan v/s. The State of Goa and others (Criminal Writ Petition No.87 of 2016)**, to which we were parties, it was held that "unless such allegations are spelt out in the complaint, a person cannot be foisted with a criminal liability as the only right that the Complainant can acquire in such circumstances is a remedy for breach of the contract in the Civil Court. Mere breach of a contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction."

8] In view of the settled position of law, now it is necessary to go through the allegations of the petitioner against the complainant and allegations of the complainant against the present petitioner.

9] Shri Rivankar, learned Public Prosecutor on behalf of the State submitted that the investigation revealed that the locker could be operated by the petitioner alone. Besides, considering the grievance of the complainant-respondent no.2, the signature on the Locker Opening Form was sent to the Government Examiner of Questioned Documents, Hyderabad to verify the allegations made by the complainant about forging of her signature by a third party. Be that as it may, it is not singularly in dispute that the petitioner had the authority to operate the locker which was held jointly by him with his wife, since deceased and mother of his three daughters during her lifetime. As such, considering the fact that the petitioner was the Senior Citizen and otherwise afflicted with a serious illness namely Cancer and that he had authority to operate the locker and had every right to deal with the belongings, the present FIR lodged against him in particular cannot be sustained which is obviously an abuse of the process of law considering also civil litigation between the petitioner and the complainant along with his other daughter in which the Civil Court is seized of the dispute. This is without prejudice to the right of the respondent no.1 to proceed against the petitioner if at all any material emerges on the basis of further investigation and the report of the Government Examiner of Questioned Documents, if need be. It is obvious that the registration of the FIR has been motivated against the petitioner on account of the strained relations between the petitioner and the respondent no.2 who has otherwise simultaneously pursued her remedy before the Civil Court in respect of the same transaction relating to the operation of the locker in the Central Bank of India, Margao Branch. The continuance of the FIR against the petitioner would therefore tantamount to purport an abuse of the process of law at the instance of the respondent no.2 and considering the law on the point, we do not find any reason to allow its continuance on the record of the file and therefore allow the petition whereby the FIR is quashed against the petitioner alone with liberty to the respondents to proceed against the other named accused therein and in accordance with law.

**NUTAN D.SARDESSAI, J** **F.M. REIS, J**

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