

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 60 OF 2016

MR. LUIS ANTONIO SALVADOR LOBO AND
ANR.,

... Petitioners

Versus

MR. AGNELO LOBO AND 2 ORS.,

... Respondents

Mr. Gajendra Usgaonkar, Advocate for the Petitioners.

Mr. John Abreu Lobo, Advocate for the Respondent Nos. 1 and 2.

Coram:- C. V. BHADANG, J.

Date:- 22nd August, 2016

ORAL ORDER:

Heard the learned Counsel for the petitioners and the learned Counsel appearing for respondent nos. 1 and 2.

2. The petitioners, who are the party no. 2 before the learned Deputy Collector and S.D.M., Mapusa in proceedings under Section 145 of Cr.P.C., are challenging the order dated 09.11.2015, by which the application filed by the petitioners for imposing penalty on the respondents (party no. 1), under Section 188 of IPC, for disobedience of preliminary order dated 25.10.2013, under Section 146 of Cr.P.C., has been dismissed.

3. The brief facts are that, on account of a dispute between the petitioners (party no. 2) and the respondents (party no. 1), in respect of property bearing survey nos. 25/25, 25/26 and 28/14 of Paliem village, proceedings under Section 145 of Cr.P.C. were initiated on

the file of the learned Deputy Collector and S.D.M., Mapusa. By an order dated 25.10.2013, Rosy Milena D'Souza (who is one of the party no. 2), was appointed as a Court receiver to harvest the paddy fields bearing survey nos. 25/25 and 28/14 and take the yields including the grass as well as paddies. This was subject to the petitioners depositing an amount of Rs.30,000/- before the Magistrate. It was directed that on deposit of the said amount, the receiver could harvest and take the yields from the paddy fields. This arrangement was only for the relevant season. The petitioners (party no. 2) was also directed not to interfere with the survey no. 25/26.

4. The petitioners moved the learned Magistrate on the allegation that the party no. 1 had interfered with survey nos. 25/25 and 28/14. The learned Magistrate has found that it was not established that the party no. 1 had disobeyed the order dated 25.10.2013. The learned Magistrate also found that the receiver was appointed only for the purpose of harvesting the paddy fields bearing survey no. 25/25 and 28/14 for a single season i.e. for the year 2013 and there was no order restraining the party no. 1 from interfering with said fields. As such, question of any disobedience does not arise and in that view of the matter, the application was rejected.

5. It is contended on behalf of the petitioners that although, the order dated 25.10.2013, appointing the Court receiver was only for one season, as the proceedings are still pending before the

Magistrate, the said order continues. Secondly, it is submitted that by mere appointment of receiver, it has to be assumed that the petitioners were placed in possession of survey nos. 25/25 and 28/14.

He therefore submits that the impugned order, which holds otherwise, needs to be set aside.

6. The learned Counsel for the respondent nos. 1 and 2 has supported the impugned order. It is contended that the receiver was appointed only for one season and for the limited purpose of harvesting the paddy fields and taking the yields namely, grass and paddies.

7. I have considered the rival circumstances and the submissions made. The order dated 25.10.2013 makes it clear that the appointment of Rosy Milena D'Souza, as a Court receiver was only for the limited purpose of harvesting the paddy fields bearing survey nos. 25/25 and 28/14 and that too, only for the harvesting season for the year 2013. The learned Counsel for the petitioners has not shown that the said order was continued by any subsequent order. Merely because, the proceedings before the Magistrate are pending, would not be sufficient to conclude that the said order has continued. That apart, the perusal of the order clearly shows that the Magistrate was not in a position to come to any conclusion as to who was in possession of the paddy fields. It is trite that an action under Section 188 IPC, would require a clear case being made out, which is

substantiated on record. In the present case, there is nothing on record that the petitioners were put in and/or continued to be in possession, of the said fields in 2013 or thereafter. I do not find that the impugned order suffers from any infirmity. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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