

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

CRIMINAL WRIT PETITION NO. 63 OF 2016

Shri Ryan Pereira,
Son of late Peter Pereira,
33 years old, businessman,
Indian National,
Resident of Pereira Bldg.,
St. Inez, Panaji-Goa.
Presently residing at Menezes Heaven,
Opposite Hotel Blue Bay,
Miramar, Panaji-Goa. Petitioner

V e r s u s

1. State
(Panaji Police Station)
2. State of Goa,
(Rep. By Pubic Prosecutor, Panaji) Respondents.

Shri Tarzan D'Costa ,Advocate for the Petitioners.

Shri S. R. Rivankar, Public Prosecutor for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 3RD MAY, 2016.

ORAL ORDER:

By this petition, the petitioner, original accused is challenging the judgment and order dated 20/11/2015 passed by the learned Sessions Judge in Criminal Revision Application no.13/2015, by which, the learned Sessions Judge has confirmed order dated 2/2/2015 passed by the learned Judicial Magistrate First Class at Panaji, in Criminal Case No.IPC 50/2013/D. By the said order, the learned Magistrate has directed framing of charge against the petitioner for the offences/s punishable under section 341, 504, 323, 506 (II) and section 509 of I.P.C.

2. According to the prosecution, a complaint was lodged on 25/1/2012 by one Viraj Mayenkar and his wife Sandhya Mayenkar. It was alleged that on 12/1/2012, at about 10.15 a.m. when the complainant Viraj was proceeding towards his office in his car from St. Inez to Panaji city, the petitioner, stopped and blocked his way by his car bearing registration no. GA -01 -S -7605, as result of which the complainant Viraj was wrongly restrained from moving ahead. It is also alleged that the complainant was assaulted with first blows, was abused and the complainant and his family members were threatened with life. Later the complainant proceeded for his urgent office work and soon thereafter the complainant Sandhya called the complainant Viraj informing that the petitioner had gone to their house, kicked the outer

door, abused and threatened her with life by indulging into criminal house trespass. A perusal of the record shows that the parties have lodged complaints and counter complaints against each other. The petitioner was a neighbour of the complainant and also a college friend. The complainant also alleges that the petitioner has an evil eye on his wife and used to make threatening calls at odd hours. The complaint was lodged on the same day, at 3.45 p.m. on the basis of which investigation was carried out and a charge sheet came to be filed.

3. The learned Magistrate on hearing the parties directed framing of charge, which order has been confirmed by the learned Sessions Judge.

4. It is submitted by the learned counsel for the petitioner that the complaint was signed by two complainants. It was a typed written complaint and lodged belatedly without any explanation for the delay. Secondly, it is submitted that the proviso to section 161 of Cr.P.C. mandates that in respect of certain offences which includes an offence under section 509 of I.P.C, the statement of a woman is required to be recorded by a lady police officer which is not done in this case. The learned counsel has then referred to the reply filed by the Investigating Officer to the application for bail, in order to point out that in the reply the spot of incident is shown to be Dukle Residency, Taleigao, which does not match with the spot, as mentioned in

the complaint. The learned counsel also points out that the panchanama is drawn at the behest of the complainant and the spot was shown by the complainant. It is also pointed out that the panchanama is not accompanied by any sketch. The learned counsel has referred to the observations in para 15 of the order passed by the learned Magistrate in order to submit that there was no sufficient material for framing of charge.

5. The learned Public Prosecutor has supported the impugned order. It is submitted that at the stage of framing of charge, the Court is not expected to appreciate the material/detail. The Court has only to see whether prima facie case is made out for framing of charge.

6. I have considered the rival circumstances and the submissions made. At the out set, it is necessary to mention that at the stage of framing of charge, the Court is not required to make a roving and elaborate inquiry and to appreciate the evidence which can be done at the trial. A reference in this regard can be made to the decision of the Apex Court in case of “**State of M.P. Vs. Mohnlal Soni**,” reported in 1 (2000) (6) SCC 338.

7. In the present case, the matter would be triable as a warrant trial and provisions of section 239 of Cr.P.C would be attracted in which the Magistrate has to consider whether the charge is groundless. It is only when

the Magistrate comes to a conclusion that the charge is groundless that the accused is entitled to be discharged.

8. Turing to the present case, it prima facie appears that the complaint is lodged on the same date at 3.45 p.m. and prima facie, it cannot be said that there is inordinate delay in lodging the complaint. No provision of law has been brought to my notice, under which a complaint signed by more than one complainant cannot be acted upon. Even in so far as the submission based on the proviso to section 161 is concerned, the record does not show that any such contention was raised either before the Magistrate or before the learned Sessions Judge. The ground based on proviso to section 161 of Cr.P.C is not even raised in the petition. In that view of the matter, it would not be appropriate to examine the same for the first time in a writ petition. That apart, prima facie, it can be seen that the proviso to section 161 of Cr.P.C is made with the object to protect the complainant and avoid embarrassment of a woman complainant during investigation. It is not shown as to how the petitioner is prejudiced by the non compliance with the proviso to section 161 Cr.P.C. Even so far as the discrepancy in the spot as mentioned in the complaint and the reply is concerned, the learned Public Prosecutor points out and to mind mind rightly so, that the said reply was filed when the matter was under investigation. That reply is also not part of the charge sheet. Even so far as the spot panchanama is concerned, the spot is

bound to be shown by the complainant and it is difficult to accept how these circumstance can come to the aid of the petitioner.

9. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of “**Satish Mehra Vs. State of N.C.T of Delhi and Anr.**” reported in (2013) CRI.L.J. 411 and the decision of the Andhra Pradesh High Court in the case of “**Rajesh Gutta Vs., State of A.P. & anr.**”, reported in (2011) CRI.L.J. 3506.

10. In the case of **Satish Mehra (supra)** there was an application for quashing of the criminal proceedings. The Hon'ble Apex Court has inter alia held that the extraordinary powers as to quashing of the criminal proceedings can be exercised at the threshold as well as at advanced stage of the trial.

11. In the case before the Andhra Pradesh High Court, the allegation was that the incident had occurred in the United States, while the cognizance was taken by the Magistrate in India without obtaining previous sanction of the Central Government which was held to be bad in law. In my considered the facts of the case in hand are clearly distinguishable.

12. I have carefully gone through the order passed by the Courts

below and I do not find any infirmity therein so as to warrant interference.

13. In the result the writ petition is hereby dismissed.

C. V. BHADANG, J.

Ap/-