

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.102 OF 2016

Mrs. Nadia Maggie de Costa
36 Years of Age,
Wife of Michael De Souza,
Resident of H.No.112,
Vaddem, Socorro, Bardez, Goa,
Bardez – Goa. Petitioner

Versus

1 State through
the Investigating Officer/
Incharge, Mapusa Police Station
Mapusa – Goa. Respondent.

Ms. Kamakshi Parab, Advocate for the petitioner.

Shri S. R. Rivankar, Public Prosecutor for the respondent no.1.

CORAM : F.M.REIS &

NUTAN D.SARDESSAI, JJ.

DATED : 14th SEPTEMBER,2016.

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

1. Heard.
2. Rule. Heard forthwith with the consent of the learned Counsel for the parties. Learned Counsel appearing for the respondents waive service.
3. The petitioner takes exception to the F.I.R. bearing No.218/2002 registered at the Mapusa Police Station on

05/08/2002 against the petitioner on the ground that she had committed an offence punishable under Section 420 r/w. 34 I.P.C. and Sections 10, 24 and 25 of the Immigration Act,1983. The petitioner's case briefly was that she was working as the Receptionist for one Vijay Ghanashamdas Tulshiyani in the year 2002 who was dealing with the recruitment of the candidates for employment abroad. The respondent no.1 had raided the Office of the said Vijay Ghanashamdas Tulshiyani on 05/08/2002 and registered an offence vide the Crime No.218/2002 under Section 420 r/w 34 I.P.C. and Sections 10, 24 and 25 of Immigration Act, 1983 and he was placed under arrest. She too was formally placed under arrest sometime on 28/02/2004 and released on bail.

4. The respondent had alleged in the complaint that the information was received that the said Vijay Ghanashamdas Tulshiyani was recruiting the people to be sent abroad and in that connection collecting passports and money and he was a fake agent who was likely to abscond alongwith the passports and money. Some passports of the candidates, blank forms and cash were attached during the conduct of the raid at his house at Duler Mapusa. They had thereafter filed a Final Form Report under Section 173 of Cr. P.C. before the Court of the Judicial Magistrate First Class, Mapusa, stating that prior sanction of the Central

Government was essential for instituting the prosecution against any person under the provisions of Section 27 of the Immigration Act, 1983. Several letters were moved to the Government of India, Labour Ministry (Protector of Immigration) in that connection. Ultimately vide the Order dated 22/09/2006, the Judicial Magistrate First Class, Mapusa had rejected the Final Report and directed the Investigation Officer to obtain the sanction and prosecute the offender.

5. It was further the case of the petitioner that 14 years had elapsed since the registration of the F.I.R. and no chargesheet was filed by the respondent no.1 based on the said F.I.R. No.218/2002. There was no iota of evidence available against the petitioner nor was there any evidence against her. The F.I.R. was therefore liable to be quashed to prevent an abuse of the process of law and to secure the ends of justice. It was her contention that the allegation in the complaint dated 05/12/2009 even if taken at the face value and/or the uncontroverted allegations made in the complaint did not reveal any offence by her and therefore she was entitled to a discharge of the F.I.R. and quashing of the said proceedings. The provisions of Section 420 of I.P.C. were not at all attracted to her even if uncontroverted allegations made in the complaint were considered. No offence was disclosed against her

and therefore on these grounds she was entitled to an order to quash the F.I.R. She was made to undergo hardship alongwith her minor children and in connection with the renewal of her passport annually with the Police Clearance Certificate which was refused on the ground that the said F.I.R. was pending against her. She was also deprived of joining her husband who was working abroad for the purpose of employment and the F.I.R. had to be quashed.

6. Ms. K. Parab, learned Advocate for the petitioner came to be heard on behalf of the petitioner who prayed for quashing of the F.I.R. by adverting to the complaint and reproduced her case that there was no material available in the complaint and/or the F.I.R. to sustain the prosecution against her. Shri Rivonkar, learned Public Prosecutor on behalf of the State/respondent no.1 submitted that in all fairness there was no material available on record against the petitioner and that an appropriate order could be passed in the matter.

7. We have heard Ms. K. Parab, learned Advocate for the petitioner and Shri Rivonkar, learned Public Prosecutor on behalf of the respondent no.1/State and besides perused the F.I.R. alongwith the complaint. A cursory perusal of the complaint and the F.I.R.

would reveal that the role of the petitioner was purely clerical while she was working with the said Tulshiyani and that there was no material on record to carve out the ingredients of the offence of cheating in terms of Section 415 r/w Section 420 of I.P.C. The availability of the evidence against the said Tulshiyani without an element of common intention of the petitioner along with him would not attract the offence of cheating punishable under Section 420 of I.P.C.

8. It is otherwise a matter of record that the Investigating Officer i.e. the respondent no.1 had prayed for a grant of "A" Summary Final Report but it was however not granted by the learned Judicial Magistrate, First Class, Mapusa with a direction to the Investigating Agency to procure the necessary sanction from the proper authority to prosecute the said Tulshiyani in particular. Since no element of criminality is attached to the action of the petitioner, and in the backdrop of the fair concession of Shri Rivonkar, learned Public Prosecutor on behalf of the State, we find it appropriate in the above circumstances to quash the F.I.R. No.218/2002 dated 05/08/2002 under Section 420 r/w. 34 of I.P.C. and Sections 10, 24 and 25 of the Immigration Act, 1983 and as otherwise the continuance of the F.I.R. against the petitioner would amount to an abuse of process of law. Besides, it is also borne out

that a period of more than 14 years has elapsed since the time of registration of the F.I.R. and no sanction too is forthcoming from the appropriate authority to prosecute the said Vijay Tulshiyani in particular based on the said F.I.R.

9. Rule is made absolute accordingly.

10. The petition stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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