

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL WRIT PETITION NO. 22/2015**

MR. NAZEEM A.K. AND OTHERS.

Petitioners**Versus**STATE OF GOA, THROUGH POLICE STATION,
CUNCOLIM POLICE STATION.**Respondents.**

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Mr. V.A. Lawande, Advocate with Ms. P. Kaur, Advocate for the petitioners.

Mr. A.N.S.Nadkarni, Advocate General with Mr. D.Lawande, APP for the respondent no.1.

Mr. A.N.S.Nadkarni, Senior Advocate with Mr. N. Pai, Advocate for the respondent no.2.

**CORAM : F.M.REIS & K.L.WADANE, JJ
RESERVED ON : 22/02/2016.
PRONOUNCED ON : 22/03/2016**

Order

1] Heard Mr. V.A. Lawande, learned counsel appearing for the petitioners, Mr. Nadkarni, learned Advocate General with Mr. D. Lawande, learned Additional Public Prosecutor appearing for the respondent no.1 and Mr. Nadkarni, learned Senior Advocate with Mr. N. Pai, learned Additional Public Prosecutor appearing for the respondent no.2.

2] The respondent no.2 herein lodged a complaint to the Police Station, Cuncolim on 3rd August, 2012 alleging that the Unit

Sunrise Zinc Limited located at Plot no.L-2 of the Cuncolim Industrial Estate was involved in production of copper and zinc and brass from brass dross, copper dross and zinc skimming. In this process, unit was generating hazardous waste. The waste generated was about 10MT/day of cake with moisture and 6.5 MT/day of leachate.

3] Presently about 25000 tons of hazardous waste is stored in the premises which was initially under the cover of tarpaulin. The said M/s. Sunrise Zinc Ltd., has stopped its operation from 24th November, 1997 as per the order passed by this Court in Writ Petition No.376/2006. The possession of the unit and plots being L-2 and L-3 was subsequently taken over by the bank-accused no.2, who had sold the said plots to M/s Axis Supreme Colorod i.e. the petitioners.

4] The plot no.L-2 and L-3 was reinspected on 20th July, 2012. From the inspection, it was found that the hazardous waste stored at the site in plot no.L-2 is not covered and is kept open to atmosphere. It is totally exposed to the rain. During inspection, it was observed that some attempts were made to shift some hazardous waste and some quantity of stored waste from plot no.L-3 has been dumped into the plot no.L-2. The samples of water from one test well located within plot no.L-2

have been collected during the inspection. It was sent for analysis. The report of the analysis indicates that the concentration values of PH and Cadmium are exceeding the prescribed permissible limits for drinking water. Thus, the respondent no.2 has lodged report against the petitioners for the offence punishable under Section 269 of the Indian Penal Code and Section 16 read with Section 15 of the Environment (Protection) Act, 1986.

5] During the course of arguments Mr. V. Lawande, learned counsel appearing for the petitioners, has pointed out that entire hazardous waste was completely covered by tarpaulin due to which there is no possibility of exposing it to the air or rain. The learned counsel appearing for the respondents has submitted that store of the hazardous waste was in plot no.L-2 is totally in contravention of the provisions of Section 16 read with Section 15 of the Environment (Protection) Act, 1986, coupled with the offence punishable under Section 269 of the Indian Penal Code.

6] While dealing with the petition for quashing and setting aside the first information report, we have to see from the contents of the first information report whether the cognizable offence is disclosed or not. From the contents of the

first information report, there are specific allegations that hazardous waste stored in plot no.L-3 is exposed to the air.

7] We have perused the record, from which it is seen that a show cause notice was issued by the respondent no.2 to the petitioner dated 8th August, 2012 wherein it is specifically mentioned that hazardous waste was stored at the site in plot No. L-2 is not covered and was kept open to the atmosphere and the rain. It was further communicated to the petitioners that the sample of water of well located at plot no. L-2 have been collected. During the inspection and analysis, data indicates that sanction value of PH and Cadmium are exceeding the permissible limit for drinking water.

8] The petitioners have replied that they have purchased two plots L-2 and L-3 located at Cuncolim and they were not aware about the solid waste material stored in the plot L-3 and L-2 were hazardous in nature. M/s. Sunrise Zinc Limited was agreed to clear the waste store in plot L-2 and L-3 but so far they have not cleared it. During the visit of the officials of the respondent no.2 waste store in plot no.L-2 was not covered completely. It is further stated that the petitioners have covered about 75% and rest would be covered completely within a short time.

9] Looking to the contents of the show cause notice and its reply by the petitioners, it appears that it is an admitted fact that the petitioners are in possession of plot No. L-2 and L-3. It is also clear that hazardous waste is kept and it was exposed to the air and rain.

10] Considering the above aspects, it is very much clear that the hazardous waste was kept in L-2 and some of its part was open to air and rain. Therefore, apparently, the provisions of Section 16 read with Section 15 of the Environment (Protection) Act, 1986 and Section 269 of the Indian Penal Code are attracted.

11] In relation to the above, it is material to note that it is well settled principle of law that the High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable defence. For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass

an order in favour of the accused to hold absence of any *mens rea* or *actus reus*.

12] Keeping in mind the above legal position, we are of the opinion that there is sufficient material against the accused for the offence punishable under Section 269 of the Indian Penal Code and under the provisions of Section 16 read with Section 15 of the Environment (Protection) Act, 1986. There is no substance in the Criminal Writ Petition and it is liable to be rejected. Hence, it is rejected.

13] Criminal Writ Petition is disposed of accordingly.

K.L.WADANE, J

F.M. REIS, J

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