

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 66 OF 2015

Sangappa V. Tenginakai (major),
S/o Veerappa Tenginakai,
R/o Kamaracazana, H. No. 8,
Mapusa, Bardez, Goa.

.... Petitioner/
Applicant

Versus

The State, through the P.P.
At High Court Building,
Altinho, Panaji.

.... Respondent

Petitioner/Applicant in person.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 22nd JANUARY, 2016.

ORAL JUDGMENT:

Heard. Admit. Heard finally by consent of the parties.

2. By this revision application, the applicant is challenging the order dated 16.07.2015 passed by the learned Judicial Magistrate First Class, Mapusa in Criminal Case No.

46/P/2009/B thereby dismissing the private complaint filed by the applicant.

3. The applicant, who has submitted his argument in person maintains that the impugned order has been passed without applying mind to the facts available on record and therefore is arbitrary and perverse.

4. Learned Public Prosecutor for the respondent-State fairly submits that some aspects of the matter, which are in the nature of allegations made by the applicant regarding his being assaulted, abused filthily and threatened have not been dealt with by the learned Magistrate and therefore, he submits that an appropriate order be passed.

5. On perusal of the impugned order as well as the statements on oath recorded by the learned Magistrate of various witnesses in particular, the statement of the applicant himself (PW-1), I find that the applicant is right when he submits that the learned Magistrate has not applied her mind to the material facts of the case. The impugned order shows that the learned Magistrate has only considered the aspect of

absence of any material to *prima facie* show that the accused persons had formed an unlawful assembly and had assaulted the complainant while hurling filthy abuses at him and also threatened him with dire consequences. Even a perusal of the statement of PW-1 i.e. the applicant, Exhibit-7 is enough to *prima facie* find that the applicant has indeed spoken about being manhandled by one of the accused persons, namely Shamir B. Naik, and also being abused filthily and threatened with dire consequences.

6. It is well settled law that while making up mind for issuance of process against the accused persons in a complaint case, what a Criminal Court has to consider is the nature of the allegations examined from the face value and upon such examination if the Court comes to the conclusion that the allegations do constitute the essential ingredients of the offences alleged, the Court has to exercise its discretion by issuance of process for the offences alleged by the applicant against the accused persons. It appears that the learned Magistrate has ignored some of the material aspects of the case as well and failed to apply settled principles of law to the facts of the case. The impugned order is, therefore, arbitrary and

perverse. It cannot be sustained in the eyes of the law and must go.

7. In the circumstances, Revision Application is allowed. The impugned order is quashed and set aside. Case is remanded back to the Court of the learned Judicial Magistrate First Class, Mapusa for reconsidering the point of issuance of process against the accused persons in accordance with law, bearing in mind the observations made herein above.

Parties to appear before the Trial Court on 08.02.2016 at 10:00 a.m.

8. Criminal Revision Application stands disposed of.

S. B. SHUKRE, J.

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