

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 156 OF 2015**

MRS.MARIA EUTROPIA FERNANDES E
PONTES.

... Petitioner

Versus

STATE OF GOA, THROUGH CHIEF
SECRETARY GOVT. OF GOA AND 2 ORS.,

... Respondents

Mr. Salil Satish Saudagar, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for respondent nos. 1 and 2.

Mr. Rohit Bras De Sa, Advocate for respondent no.3.

Coram:- C. V. BHADANG, J.

Date:- 4th April, 2016

P.C.

Heard the learned counsel for the petitioner and the learned counsel appearing for the third respondent. I have also heard the learned Public Prosecutor for respondent no.2.

2. The brief facts are that on the basis of a complaint lodged by the petitioner, an offence under Sections 465, 467, 468, 471, 419 and 420 of Indian Penal Code was registered vide Crime No.192/2008 with P.S. Mapusa. It appears that after the investigation, a charge-sheet was filed against the third respondent and now deceased Anil Fadte which

was registered as Criminal Case No.181/S/2010/A in the Court of the Judicial Magistrate First Class, Mapusa. Even before the charge could be framed, the accused no.2 Anil Fadte expired. The learned Magistrate, by an order dated 06.06.2011 discharged the sole surviving accused no.1 (the third respondent herein). Undisputedly, the State challenged the same before the learned Sessions Judge by filing a Criminal Revision Application which was barred by time. Accordingly, Revision Application was accompanied by an application for condonation of delay which was registered as Criminal Misc. Application No.7/2012. The Additional Sessions Judge at Mapusa, dismissed the application by an order dated 21.07.2012. Admittedly, the State did not carry the matter any further.

3. After this the petitioner being the original complainant approached the learned Magistrate for a direction for further investigation which was registered as Criminal Misc. Application No.368/2013/A. The learned Magistrate by order dated 30.05.2014 has dismissed the application as being not maintainable. The petitioner challenged the said order before the learned Sessions Judge in Criminal Revision Application No.80/2014. The learned Sessions Judge by order

dated 09.03.2015 has dismissed the Revision Application.

4. By this petition, the petitioner seeks to challenge the order/s refusing to direct further investigation.

5. The learned counsel for the third respondent has raised a preliminary objection on the ground that the petitioner had challenged the very same order before this Court in Criminal Writ Petition No.96/2015 and that the petition was disposed of as withdrawn on 12.08.2015. The learned counsel submits that in such circumstances, a fresh petition challenging the very same order would not lie.

6. The learned counsel for the third respondent otherwise supports the impugned order refusing to direct further investigation.

7. The learned Public Prosecutor submits that in view of the fact that the proceedings in the Criminal Case have already come to an end on account of the discharge of the sole surviving accused and the said order having attained finality on refusal of the condonation of delay by the learned Sessions Judge, there is no error in the order of the

Magistrate in finding that the application seeking further investigation, was not maintainable.

8. The learned counsel for the petitioner submits that the petitioner had not issued any instructions to the earlier counsel who was appearing in Criminal Writ Petition No. 96/2015 for withdrawal of the same. He, therefore, submits that the said order would not come in the way.

9. I have considered the circumstances and the submissions made. It is not necessary to go into the merits of the matter as I find that the second petition challenging the very same order would not be maintainable on account of the fact that the earlier petition stood withdrawn. It would be significant to note that the petitioner is trying to make out a case that the earlier counsel appearing for the petitioner was not in fact instructed to withdraw the petition. Such a case cannot be examined or decided behind the back of the concerned counsel.

10. The Hon'ble Apex Court in the case of **Sarguja Transport Service Vs State Transport Appellate Tribunal, M. P. Gwalior and**

others, reported in (1987) 1 SCC 5 has held that the second petition on the same cause of action in the face of withdrawal of the earlier petition would not be maintainable. In that view of the matter, I decline to entertain the same. The petition is accordingly dismissed.

C. V. BHADANG, J.

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