

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.18 OF 2016.

Shri. Shashikant B. Bhagat, S/o of
Late Babuso Laximan Bhagat, 52
years of age, R/o. Bhagatwada,
Char Rasta, Canacona-Goa.

.....

Petitioner.

Versus

1. The Chief Secretary,
Government of Goa,
Secretariat, Alto Porvorim,
Goa.
2. The Secretary(Personnel),
Department of Personnel,
Government of Goa,
Secretariat, Alto Porvorim-
Goa.
3. The Secretary (Home),
Department of Home,
Government of Goa
Secretariat Alto Porvorim
Goa.
4. Police Inspector, SHO
Canacona Police Station
Canacona Goa.
5. The Under Secretary
(Peronnel), Government of
Goa, Secretariat Alto
Porvorim Goa.
6. Agnelo Fernandes, Major in
age, Presently holding Post
of Chief Officer, Curchorem.
Cacora Municipal Council,
Curchorem Goa.
7. The Chief Officer, Canacona
Municipal Council,
Canacona, Goa.

.....

Respondents.

Ms. A. Desai, Advocate for the petitioner.

Ms. M. Pinto, Additional Public Prosecutor for the respondents.

Coram:-F. M. REIS,

K. L. WADANE, JJ.

Reserved on: 22nd February, 2016.

Pronounced on: 22nd March, 2016.

JUDGMENT (Per K. L. Wadane, J.)

Heard Ms. A. Desai, learned Counsel appearing for the petitioner and Ms. M. Pinto, learned Additional Public Prosecutor appearing for the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned counsel appearing for the respective parties. Learned Additional Public Prosecutor waives notice on behalf of the respondents.

4. The present Writ Petition is filed by the petitioner seeking direction to the respondents to grant sanction to prosecute the respondent no. 6 for the offence punishable under Sections 427 and 447 of I.P.C.

5. Brief facts of the case may be stated as follows:-

The petitioner is a co-owner of the property surveyed under No. 103/2 situated at Nagarcem, Palolem Village Canacona-Goa. In the aforesaid property the father of the petitioner had constructed residential house. The petitioner along with his family members were

residing in the said house.

6. On 18.8.2009, when the petitioner was inside the house, the Chief Officer of the Canacona Municipal council along with demolition squad entered the property of the petitioner and demolished the house in survey no.103/2. At the relevant time, the respondent no.6 Shri Agnelo Fernandes was the Chief Officer. On inquiry, it was informed that such demolition is as per the directions of the High Court. However, such orders were not shown to the petitioner. According to the petitioner, the respondent no. 6 and the demolition squad have illegally demolished and destroyed the house thereby causing loss to the tune of Rs. 5,52,500/-. The petitioner thereafter lodged a written complaint against the respondent no. 6 for illegally demolishing the residential house. Since the case was not registered against the respondent no.6, he filed an application under Section 156(3) of Cr.P.C. in the Court of Judicial Magistrate, First Class, Canacona Goa. The learned Judicial Magistrate, First Class directed the respondent no. 4 - Police to investigate the case. The investigation report was produced before the Court along with the report of the surveyor from the Office of the Inspector and Land Survey. The learned Judicial Magistrate, First Class then ordered to take cognizance of the offence punishable under Sections 427, 447 of IPC. The petitioner was also directed to produce the sanction to prosecute the respondent no. 6 within 6 months. The respondent no. 5/Government of Goa did not grant permission within a period of six

months. Therefore, the respondent no. 4 applied for extension of time and same was dismissed. The petitioner filed an application for issue of process against the respondent no. 6. The same was also dismissed on 27.5.2013. The petitioner challenged the order dated 27.5.2013 before the learned Sessions Judge, South Goa, in Criminal Revision Application No.61/2013. The same was dismissed by the learned Sessions Judge on 28.5.2015. Meantime by order dated 19.8.2013, the respondent no.5 rejected the request for grant of sanction under Section 197 of Cr.P.C. to prosecute the respondent no. 6. Hence, the petitioner prayed to direct the other respondents to issue sanction to prosecute the respondent no.6.

7. We have duly considered the rival contentions of both sides and scrutinized the record.

8. From the record it reveals that as per the directions of the High court, the house in survey no.117/7 was ordered to be demolished, however, due to mistake in the place of survey no. 117/7 it was mentioned as survey no. 103/2. Before the demolition, the show cause notice was issued to the petitioner. However, the petitioner had not clarified to the respondent no. 6 that his house is not coming under the area in which High Court had directed to demolish the house. At that time, if the petitioner was in a position to explain this position, then the mistake could have been corrected. At the same time it is equally true that the respondent no.6 lost the sight of

corrigendum dated 2.1.2009 stating that survey no.103/3 be read as survey no.117/7. If corrigendum was brought to the notice of the respondent no. 6 within time, then the demolition of the house of the petitioner in survey no. 103/2 could have been avoided. Any how, it appears that there was gross negligence on the part of the respondent no.6 by which huge loss is caused to the petitioner. But from the record it appears that the act of the petitioner was without intention or there was no mensrea. The respondent no. 6 along with demolition squad had demolished the house of the petitioner presuming that it had to be demolished as per the directions of the High Court. The act of the respondent no.6 was without verification of the relevant record. Therefore, there was gross negligence on the part of the respondent no. 6, but it doesn't mean that the respondent no. 6 has committed any criminal offence. We have gone through the order passed by the respondent no.5 in which it is observed that there was no criminal intention on the part of the Mr. Agnelo Fernandes to demolish the structure existing in the survey no.103/2, however, it was mistake committed by the respondent no.6 and in that process the petitioner had incurred losses. Besides that notice was served on the petitioner for removal of the alleged encroachment within 60 days. The petitioner despite of the receipt of the faulty notice, did not brought it to the notice of the Chief Officer, respondent no. 6. However, this does not absolve gross mistake committed by the officer which has caused financial loss to the Bhagat/petitioner. At the same time it cannot be held that the Chief Officer had deliberately demolished the structure

in survey no. 103/2.

9. Looking to the above observations of the sanctioning authority, we find that the order passed by the respondent no. 5 is well reasoned and that too with the application of mind and as per the correct position of the law, and object of the provisions of Section 197 Cr.P.C.

10. For the reasons stated above, we do not find any merit in the above Writ Petition, therefore, the same is liable to be dismissed and accordingly, it is dismissed.

11. Rule stands discharged.

12. Petition stands disposed of accordingly.

K. L. WADANE,J.

F. M. REIS,J.

vn*