

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 154 OF 2015.

1 Cedric Bosco Savio Lobo,
major of age, r/o 1-C
Shivkrupa building Opp.
Don Bosco High School,
Panjim-Goa 403 001 Petitioner.

Versus

1 State of Goa represented
by its Chief Secretary
Having office at
Government Secretariat,
Porvorim-Goa.

2 Judicial Magistrate First } ...Deleted
Class "C" Court Civil and
Criminal Courts, Mapusa
Goa. }

3. Mr. Lavu Anand Goltekar,
Major of age, in businss,
r/o House No. 239, Shanti
Mansion, Cobrawaddo,
Calangute, Bardez Goa.

4. Mrs. Shanti Lavu Goltekar,
Major of age, housewife,
r/o. House No. 239, Shanti
Mansion, Cobrawaddo,
Calangute, Bardez Goa. Respondents.

Petitioner present in person.

Ms. M. Pinto, Additional Public Prosecutor for the respondent
nos.1 and 2.

Mr. Sarvesh Kalangutkar, Advocate for the respondent nos. 3
and 4.

Coram:-S. B. SHUKRE, J.

Date:-7th January, 2016.

ORAL JUDGMENT

Heard.

2. Rule made returnable forthwith.

3. Heard finally by consent.

4. Ms. M. Pinto, learned Additional Public Prosecutor waives notice on behalf of the respondent nos.1 and 2 and Mr. S. Kalangutkar, learned Advocate waives notice on behalf of the respondent nos. 3 and 4.

5. By this petition, the petitioner has challenged the order dated 16.10.2015 passed in Criminal Miscellaneous Application no. 164/2012 by the Judicial Magistrate First Class, "C" Court Mapusa. According to the petitioner, who appears in person, the order impugned reflects complete non-application of mind to the facts of the case by the learned Magistrate and is founded upon unsustainable grounds. The petitioner further submits that only two reasons have been stated by the learned Magistrate in rejecting the complaint filed by him for initiating action in accordance with section 340 of Cr.P.C for filing of complaint against the respondent nos. 3 and 4 for offences punishable under Sections 193, 196, 199 and 200 of IPC.

6. The substance of allegations against the respondent nos. 3 and 4 was that in two civil proceedings, one being Civil Suit bearing Regular Civil Suit No. 103/2010 and the other being Revenue Proceedings bearing No. DDPN/Calangute/Bar/29/2011 initiated under Sections 65 and 66 of the Goa Panchayat Raj Act, 1994, these respondents made contrary statements on oath and thus committed offences relating to perjury. The petitioner states that the learned Magistrate, however, has not at all applied his mind to the facts of the case and this is evident from his observation that copy of the complaint/copy of the written statement as well as copy of the reply of the respondent nos. 3 and 4 were not filed on record by the petitioner. He also points out that even though outcome of these two proceedings had no bearing upon the merits of the allegations made against the respondent nos. 3 and 4, and what was material was only making out the offences relating to perjury, the learned Magistrate held that the complaint did not disclose any thing about out come of the proceedings before Civil Court and the Public Authority. The petitioner has taken me through the alleged contrary statements of the respondent nos. 3 and 4 in order to support his argument that prima facie offences relating to perjury have been committed by these respondents. Accordingly, the petitioner states that the learned Magistrate be

directed to file a complaint in terms of Section 340 of Cr.P.C. against the respondent nos. 3 and 4 for the said offences.

7. The learned Counsel for the respondent nos. 3 and 4 submits that so far as the facts emerging from the record are concerned, record of the complainant case which is Criminal Miscellaneous Application No. 164/2012 speaks for itself and he has nothing to add thereto. He also submits that perusal of the alleged contrary statements made in the written statement and the reply would only show that no prim facie case of perjury has been made out by the complainant i.e the petitioner. On these grounds he urges that this Writ Petition deserves to be dismissed.

8. Learned Additional Public Prosecutor submits that record of the Criminal Miscellaneous Application is here which is self-explanatory and therefore, further submits that an appropriate order be passed.

9. On going through the relevant pages of the roznama of the Criminal Miscellaneous Application, copies of which have been filed on record and also copy of examination in chief of the complainant/i.e. the petitioner which is forming a part of the

paper book, I find that, there is substance in the submissions of the petitioner that the learned Magistrate has passed the impugned order completely in ignorance of facts on record. Copy of the written statement filed by the respondent nos. 3 and 4 in Regular Civil Suit No. 103/2010 as well as the copy of the reply filed in Revenue Proceedings by the same respondents have already been acknowledged to be produced on record by the petitioner. That apart, Regular Civil Suit No. 103/2010, as seen from the roznama, itself was transferred to the Court of the same learned Magistrate and it was pending before him on the date on which the impugned order was passed. It has been brought to the notice of this Court by the petitioner that even today this Civil Suit is pending on the file of the same learned Magistrate. The learned Magistrate, therefore, could have done well to benefit himself by advertng to the facts contained in the record of the said suit pending before him if at all he had some doubts about filing of the relevant documents by the petitioner. He could also have assured himself in this regard by going through the record of the Regular Civil Suit regarding outcome of the proceedings in that suit. The learned Magistrate, however, did not embark upon such an exercise and the result was dismissal of the complaint on completely untenable and unsustainable grounds. Even otherwise, out

come of the proceedings of the suit or the revenue case could not said to be have any relevance for deciding the issue of prima facie making out of any offence of perjury as alleged by the petitioner and what could have been material for arriving at a decision in this regard was the bundle of facts alleged to be contrary, as revealed from the statements made by the respondent nos. 3 and 4 in their written statement filed by them in Regular Civil Suit and their reply in the Revenue Case. Such an order, therefore, is perverse and arbitrary and cannot sustain the scrutiny of law. It deserves to be quashed and set aside and the matter is required to be heard afresh by the learned Magistrate.

10. Accordingly, petition is allowed. The impugned order dated 16.10.2015 is hereby quashed and set aside. The case is remanded back to the learned magistrate for a fresh consideration of the Criminal Miscellaneous Application No. 164/2012 in accordance with law. The learned Magistrate shall dispose of the application as expeditiously as possible and in any case within a period of six months from the date of the order.

11. Rule is made absolute in these terms.

12. Petition stands disposed of.

S. B. SHUKRE,J.

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