

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.39 OF 2017

1. Shri Sunny Murgaokar
S/o. Ranganath Murgaokar
32 years of age,
R/o. H. No.20/262,
Kevnem, Teleigaon, Goa.
2. Shri Deepak Murgaonkar
S/o. Onu Murgaokar
25 years of age,
R/o. H. No.260/1,
Kevnem, Teleigaon, Goa. ... Petitioners

Versus

1. State of Goa
(through the Police Inspector of
Panaji Police Station)
Having its office at Panaji Police Station,
Panaji – Goa.
2. Smt. Varsha Vaicunth Pai
wife of Vaicunth Pai
Major in age
R/o. H. No.11, Kevnem,
Teleigaon, Goa. ... Respondents.

Shri P. Karpe, Advocate for the petitioners.

Shri M. Amonkar, Additional Public Prosecutor for the respondent no. 1.

Shri A. Kamat, Advocate for the respondent no.2.

**CORAM : F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 11th April, 2017.

ORAL JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Shri P. Karpe, learned Advocate for the petitioners, Shri M. Amonkar, learned Additional Public Prosecutor for the respondent no. 1 and Shri A. Kamat, learned Advocate for the respondent no.2.

2. Rule.

3. Heard forthwith with the consent of the learned Advocate appearing for the respective parties. Shri M. Amonkar, learned Additional Public Prosecutor waives service on behalf of the respondent no. 1 and Shri A. Kamat, learned Advocate waives service on behalf of the respondent no.2.

4. The petitioners takes exception to the F.I.R. No.271/2013 registered at the Panaji Police Station under Section 354(D)(1), 509, 447 r/w 34 I.P.C. and the Chargesheet filed subsequent thereto before the J.M.F.C.,Panaji in the Criminal Case No. IPC/143/2014/D for the stated charges. It was briefly the case of the petitioners that the respondent no.2 had filed the complaints dated 09/06/2013, 15/06/2013 and 01/07/2013

alleging that they were constantly harassing her by watching the house and the inmates of her house in the manner that resulted in a fear of violence and distress in her mind and her family and besides it interfered with her mental peace. It was alleged in the complaint that the loitering of the petitioners at the gate of the house of the respondent no.2 during the day and night and also criminally trespass into her house and uttering words and gestures to her family, tantamounted to outraging her modesty and that of her family members. An offence accordingly came to be registered vide the F.I.R. No.271/2013 by the respondent no.1 for the stated offences followed by the Chargesheet before the J.M.F.C., Panaji.

5. The petitioners no. 1 and 2 and the respondent no.2 had decided to bury the past and amicably settle the matter without any duress or influence and accordingly the petitioner filed an undertaking dated 17/11/2016 before the learned J.M.F.C., Panaji. However, since they had been charged with the offence under Section 354(D)(1) I.P.C. which was not compoundable, the petitioners had been constrained to invoke the inherent powers of this Court to secure the ends of justice and to prevent the abuse of the process of law seeking to

quash the order issuing process and the proceedings against them.

6. We have examined the records and besides considered the contentions of Shri P. Karpe, learned Advocate for the petitioners, Shri M. Amonkar, learned Additional Public Prosecutor for the respondent no.1 and Shri A. Kamat, learned Advocate for the respondent no.2 who in particular adverted to the undertaking executed by the petitioners. It is apparent from the undertaking given by both the petitioners that they undertook not to get involved with the complainant or with her husband by any act that may amount to an harassment to the complainant or her husband by standing near their gate, bursting crackers, playing Holi, preparing Narkasur, or on any occasion by sending drunk person/s inside the house or the property of the complainant. Besides, by the said undertaking they undertook to abide by the said undertaking given by them willingly and without any kind of pressure or duress.

7. Moreover, we have also examined the affidavit filed by the respondent no.2/ complainant who has also indicated therein that the petitioners have made statements that they

are willing to furnish an undertaking not to repeat any of the conduct complained of by her and that they had amicably decided to settle the matter in order to have peaceful and cordial neighbourly relations without any duress or influence. Considering that the offence under Section 354(D)(1) I.P.C. is not compoundable in terms of Section 320 Cr.P.C. but nonetheless considering the inherent powers of this Court and that the offence does not fall within the category of a serious or heinous crime such as rape, murder, dacoity etc. and following the guidelines laid down by the Hon'ble Apex Court in "**Gian Singh v/s. State of Punjab and another**" [(2012) 10 SCC 303] and that in "**Yogendra Yadav and others Vs. State of Jharkhand and another**" [(2014)9 SCC 653], we are inclined to allow the petition by accepting the undertaking. In the result, we pass the following

ORDER

- (i) Rule is made absolute in terms of prayer clauses (a) and (b) whereby the F.I.R. No. 271 of 2013 and the Criminal Case no IPC/143/2014/D stand quashed and set aside.

(ii) There shall be no order as to costs.

NUTAN D. SARDESSAI,J.

F. M. REIS,J.

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