

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 122 OF 2016

MR. DOMNIC D'SOUZA., ... Petitioner

Versus

THE POLICE INSPECTOR, MAPUSA
POLICE STATION, MAPUSA AND 3 ORS., ... Respondents

Shri Kapil D. Kerkar, Advocate for the Petitioner.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

CORAM:- C.V. BHADANG, J.

DATE:- 23rd MARCH, 2017.

ORAL ORDER:

Heard Shri Kerkar, the learned Counsel for the petitioner and Shri Amonkar, the learned Public Prosecutor for the respondents.

2. The petitioner is challenging the dismissal of his application under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) by the learned Magistrate, which order has been confirmed by the learned Sessions Judge vide judgment and order dated 25.01.2016, passed in Criminal Revision Application No. 124/2014.

3. The brief facts necessary for the disposal of the petition may be stated thus:

The petitioner filed a complaint against one Mr. Francis Fernandes and another somewhere in January, 2011, on the basis of which, an FIR bearing Crime No. 3/2011 with the Mapusa Police Station under Sections 143, 147, 452, 323, and 506(ii), read with Section 149 of IPC, was registered. It appears that subsequently, the petitioner withdrew the complaint. On withdrawal of the complaint, the Police sent a 'C' summary report to which, the petitioner objected, on the ground that the complaint was withdrawn under the threat from Mr. Francis Fernandes. On 09.03.2012 that the learned Magistrate directed the Police Inspector, Mapusa Police Station (respondent no. 1) to further investigate into the FIR bearing Crime No. 3/2001.

4. On 26.12.2013, the petitioner filed another complaint against one Mr. Tony Ferrao (accused no. 3 in Crime No. 3/2001), alleging criminal intimidation and interference with one Mrs. Luiza D'Souza, who was a witness, in the said crime. According to the petitioner, as no action was taken on the said complaint, he approached the Superintendent of Police, North (SP, for short), who called a report from the Deputy Superintendent of Police, Mapusa. The petitioner obtained a copy of the report

dated 02.02.2014 sent by Mr. Serafin Dias, Sub-Divisional Police Officer, Mapusa, Goa (SDPO, for short) to the SP. According to the petitioner, the SDPO made a false report to the SP, in as much as, in the reply filed by the Police Inspector, Mapusa Police Station on 02.06.2014, before the learned Judicial Magistrate First Class at Mapusa, in Criminal Miscellaneous Application No. 143/2014/A, the Police Inspector has stated that the staff of the police station had visited the residence of Mrs. Luiza D'Souza on 28.03.2014, for recording her statement with regard to the complaint filed by the petitioner about intimidation. The report further stated that Mrs. Joan Mascarenhas, the daughter-in-law of Mrs. Luiza D'Souza refused to allow the staff of police station to record the statement of Mrs. Luisa D'Souza, stating that her mother-in-law is aged and is taking rest. In short, according to the petitioner, when the staff of the police station had visited the residence of Mrs. Luiza D'Souza on 28.03.2014, the SDPO could not have made a report on 02.02.2014 stating that the report filed by the complainant about intimidation of the witness, is false.

5. According to the petitioner, the SDPO has committed an offence under Sections 167, 218, 220, 211 of IPC. On 14.02.2013, the petitioner filed a complaint against the SDPO.

According to the petitioner as no action was taken, the petitioner approached the SP (respondent no. 2) in terms of Section 154(3) of Cr.P.C., however, to no avail. It is in these circumstances that the petitioner filed an application before the Judicial Magistrate First Class at Mapusa on 21.03.2014 under Section 156(3) of Cr.P.C. The learned Magistrate by an order dated 20.10.2014, dismissed the application, which was unsuccessfully challenged by the petitioner in Criminal Revision Application No. 124/2014, before the learned Sessions Judge. This is how the petitioner has approached this Court, challenging the dismissal of his application under Section 156(3) of Cr.P.C.

6. I have heard Shri Kerkar, the learned Counsel for the petitioner and Shri Amonkar, the learned Additional Public Prosecutor for the respondents. With the assistance of the learned Counsel for the parties, I have perused the order of the learned Magistrate and the judgment passed by the learned Sessions Judge.

7. It is submitted by Shri Kerkar, the learned Counsel for the petitioner that according to the Police Inspector, Mapusa Police Station, the staff of Mapusa Police Station had visited the residence of Mrs. Luisa D'Souza on 28.03.2014. As such, the

SDPO could not have made a report on 02.02.2014 that the allegation of the witness being intimidated, does not hold good. It is submitted that the SDPO specifically mentioned in the report that the witness has not made any statement supporting the complaint. This according to the learned Counsel would be an offence under Section 218 of IPC.

8. On the contrary, it is submitted by Shri Amonkar, the learned Additional Public Prosecutor that all that the SDPO has said in his report is that the complaint was under investigation and the witness had not made any statement supporting the said complaint. It is submitted that the said statement cannot be said to be false only because the Police Inspector had filed a reply before the Magistrate saying that the staff of Police Station had visited the residence of Mrs. Luiza D'Souza on 28.03.2014. It is submitted that the investigation is a continuing process and the contention raised on behalf of the petitioner is not sufficient for directing registration of an FIR or directing investigation. It is submitted that the Courts below have rightly dismissed the application filed by the petitioner under Section 156(3) of Cr.P.C.

9. I have carefully considered the rival circumstances and the submissions made. The Police Inspector, Mapusa Police

Station filed a report before the learned Magistrate on 02.05.2014, of which para 'h' reads thus:

“It is submitted that on 28.03.2014, the staff of this Police Station had went to the residence of Mrs. Luiza D'Souza, who is presently age of about 80 years to record her statement in regards to complaint dated 26.12.2013 and 14.02.2014 filed by the complainant of pressuring and interfering and intimidating by accused Tony Ferrao to Luiza D'Souza, however, Mrs. Joan Mascarenhas, daughter-in-law of the complainant refused to allow to take her statement stating that her mother-in-law is aged woman taking rest and that they had already filed complaint against Shri Serafin Dias, the then SDPO Mapusa in JMFC Mapusa for filling false report.”

10. The SDPO in his report, has stated thus:

“It is submitted that, the allegation of intimidating the witness does not hold good as the above case is under investigation and the witness has not made any statement supporting the present petition.”

11. The contention on behalf of the petitioner is that when the staff of Police Station had visited the residence of Mrs. Luiza D'Souza on 28.03.2014, the SDPO could not have reported on 02.02.2014 that the allegation of intimidation of witness does not hold good and that the witness has not made any statement

supporting the complaint.

12. Section 218 of IPC provides for an offence in which a public servant creates incorrect record or writing with intent to save a person from punishment or property from forfeiture. For an offence under Section 218 of IPC to be made out, it has to be clearly shown that a public servant has prepared any record or other writing, which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture.

13. In the present case, all that the SDPO had reported to the SP is that the complaint was under investigation. Thus, it was not a final opinion or a final report recorded by the SDPO. It is evident that any such opinion would depend upon the stage of the investigation, the evidence and other material collected at that stage. The learned Magistrate has noticed that the SDPO has only stated that the witness has not made a statement in support of the complaint and has stated that the case is under investigation. The learned Magistrate has thus found that the

application alongwith the accompanying documents do not disclose the commission of an offence under Section 218 of IPC or any other cognizable offence.

14. The learned Sessions Judge has considered the question of sanction. The learned Sessions Judge has noticed the decision of the Hon'ble Supreme Court in the case of **Anil Kumar & Others Vs. K. Aiyappa & Another, 2014 Cri. L.J. 1** and has found that the question of sanction is of paramount importance and the learned Magistrate could not have otherwise ordered investigation against a public servant while invoking Section 156(3) of Cr.P.C.

15. Insofar as the aspect of sanction is concerned, it was submitted by the learned Counsel for the petitioner that sanction would be necessary only where, the act complained of is said to be closely connected and is having a nexus with the discharge of official duty of a public servant. In other words, it is submitted that the act of making a false report, cannot be said to be having any nexus with the discharge of an official duty of a Police Officer and for the matter of that any public Officer. The learned Counsel for the petitioner therefore contends that the sanction was not necessary.

16. I find that it would not be necessary to go into the aspect of sanction because otherwise on facts, no case for directing investigation is made out in the present matter. Only because the police staff from the Mapusa Police Station had visited the house of Mrs. Luiza D'Souza on 28.03.2014, it cannot be said that the report given by the SDPO and the opinion expressed that the complaint is not substantiated, would not be sufficient to disclose commission of an offence under Section 218 of IPC. The report clearly shows that the investigation was still in progress. As noticed earlier, all that the SDPO has reported is that the investigation was in progress and the witness has not made any statement supporting the complaint. On a careful consideration of circumstances and the material on record, I do not find that the impugned order of dismissal of the application under Section 156(3) of Cr.P.C. needs interference.

The petition is without any merit and it is accordingly dismissed.

C.V. BHADANG, J.

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