

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 45 OF 2017

RAMANAND SHARMA.,

... Petitioner

Versus

THE STATE OF GOA, THR. THE POLICE
INSPECTOR, PANAJI POLICE STATION
AND ANR.,

... Respondents

Mr. Nikhil Deelip Pai, Advocate for the Petitioner.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent No. 1.

Coram:- C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 8th September 2017

ORAL ORDER:

We have heard the learned Counsel for the petitioner and the learned Public Prosecutor for the respondent no. 1.

2. As the matter involves technical aspect, we had thought it fit to have the assistance of respondent no. 2, on whose complaint the offence has been registered and the charge sheet has been filed.

3. We regret to note that inspite of service of notice twice on the respondent no. 2, there was no appearance. We disapprove the conduct of the respondent no. 2, who is a public officer.

4. The learned Counsel for the petitioner has submitted that there are no CDR details produced on record to establish that the petitioner was running an illegal telephone exchange. The learned Counsel has also pointed out the charge sheet, in which, the result of the laboratory analysis is shown to be 'Nil'. It is thus submitted that there is no material against the petitioner to show the complicity of the petitioner in the alleged crime. The learned Counsel for the petitioner has made an alternate submission that in any event, the offence under Section 420 of IPC is not made out.

5. The learned Public Prosecutor for the respondent no. 1 submits that the charge sheet is already filed and thus, it would be appropriate for the learned Magistrate to consider the material at the time of framing the charge and the petitioner will get an opportunity to make out the case for discharge, which shall be appropriately considered by the learned Magistrate.

6. We have given our anxious consideration to the rival circumstances and the submissions made. At the outset, we may note that the matter is of a technical nature. In this case, the charge sheet is already filed and in our considered view, it would be appropriate for the Magistrate to consider the material in the context of the contentions raised above and any other contentions as may be available in law, at the time of framing the charge.

7. In such circumstances, we decline to entertain the petition, which is accordingly dismissed. All rival contentions of the parties are left open.

8. At this stage, the learned Counsel for the petitioner submits that the personal presence of the petitioner may not be necessary, unless, specifically required by the Magistrate.

9. The petitioner shall be at liberty to apply for personal exemption and if, such an application is filed, we are sure that the learned Magistrate shall consider the same on its own merits.

PRITHVIRAJ K. CHAVAN, J.

C. V. BHADANG, J.

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