

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.42 OF 2017.

Mr. Raju Nayak, 55 years, The
Editor, Of Marathi Daily
"Lokmat" Newspaper, Having
its registered office at Rizvi
Chambers, Panaji, Goa.

..... Petitioner.

Versus

1. Mr. Nilesh Dabholkar, 39
years of age, Indian
National, Agriculturist,
married, Resident of H.
No.275/2(new), 145(old),
Dabholwada, Chapora,
Goa.

2. Police Inspector, Anjuna
Police Station, Anjuna,
Bardez, Goa.

3. State, Public Prosecutor,
High Court of Bombay at
Panaji, Goa.

..... Respondents.

Shri A. Rodrigues, Advocate for the petitioner.

Shri D. Pangam, Advocate for the respondent no.1.

Shri Pravin Faldessai, Additional Public Prosecutor for the
respondent no.2 and 3.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Reserved on:- 6th April, 2017.

Pronounced on :-7th April, 2017.

JUDGMENT (Per Nutan D. Sardessai, J)

Heard Shri A. Rodrigues, learned Advocate for the petitioner, Shri D. Pangam, learned Advocate for the respondent no.1 and Shri Pravin Faldessai, learned Additional Public Prosecutor for the respondent nos.2 and 3.

2. Rule. Heard forthwith with the consent of the learned Counsels appearing for the parties.

3. The learned Addl. Public Prosecutor and learned Advocate waive notice on behalf of the respective respondents.

4. It was the contention of Shri A. Rodrigues, learned Advocate for the petitioner that the petitioner as the Editor of the daily Marathi "Lokmat" had published an article as submitted by the correspondent. The order passed by the learned JMFC displayed a total non application of mind and was a non-reasoned order. The remedy available to the respondent no.1 was to file a police complaint. Hence, the impugned order had to be quashed and set aside.

5. Shri D. Pangam, learned Counsel appearing for the respondent no.1 submitted that an application was filed under Section 155(2) Cr.P.C. on behalf of the respondent no.1 and consequent thereto the learned Magistrate had passed the order directing the FIR to be registered and no fault could be found with the impugned order which was consequential and arising from the earlier order of the same Magistrate dated 23.9.2016. It was his contention further that there was sufficient material on record to register the FIR against the petitioner. The grounds urged by the petitioner to quash the FIR were without any basis. Moreover, an order was passed by another JMFC in CRMA No.238/2016/D dated 8.7.2016 which was in complete variance with the order passed by the Magistrate giving rise to the impugned order. The learned Magistrate had acted within his jurisdiction to pass the impugned order and as otherwise police could not proceed with the investigation without registering the FIR. Hence no interference was called for with the impugned order.

6. We have duly considered the submissions of the learned Counsels and we have also gone through the records.

7. Section 155 Cr.P.C. deals with the information as to non-cognizable cases and investigation of such cases and it provides in no uncertain terms in clause (2) that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Sub-Section (3) contemplates that any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

8. A bare reading of Section 155(2) and (3) Cr.P.C. would reveal that the police officer assumes powers of investigation in a non-cognizable offence only pursuant to the orders of the Magistrate having power to try such a case or commit the case for trial. Thereupon, on the basis of such an order he may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

9. Coming to the impugned order, the learned JMFC, no doubt vide his earlier order dated 23.9.2016 directed the Police Inspector, Anjuna Police Station i.e the respondent no.2 to investigate the complaint lodged by the applicant, i.e the respondent no.1 herein and furnish his report to the Court on or before 7.11.206. Nonetheless, as submitted by Shri P. Faldessai, learned Addl. Public Prosecutor on behalf of the State, that no such report came to be furnished before the learned Magistrate. Yet however, the learned Magistrate in his wisdom and acting upon the application filed by the respondent no.1 in a most cavalier manner ordered the FIR to be registered in terms of the non-cognizable complaint without in any manner assigning any reasons for making such an order. Non application of mind by the learned JMFC is writ large on the face of the impugned order and exceeding beyond the powers of the Magistrate to direct the registration of an FIR on the basis of an NC complaint. The impugned order, therefore cannot stand the test of legal scrutiny and we hold therefore, that it need interference by this Court.

10. In the result, we pass the following:-

ORDER

The impugned order is therefore quashed and set aside. Rule is made absolute in the aforesaid terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

vn*