

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 73 OF 2017

MRS. JOAN MASCARENHAS E D'SOUZA., ... Petitioner
Versus
THE POLICE INSPECTOR, MAPUSA
POLICE STATION AND 6 ORS., ... Respondents

Mr. Kapil D. Kerkar, Advocate for the petitioner.
Mr. Pravin N. Faldessai, Additional Public Prosecutor for the
respondents No.1, 2 & 3.

Coram:- F. M. REIS &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 13th June, 2017

P.C.:

Heard Shri Kapil Kerkar, learned Counsel appearing for the petitioner and Mr. Prvain Faldessai, learned Additional Public Prosecutor appearing for the respondents No.1 to 3.

2. The main relief in the above petition is to exercise jurisdiction under Section 482 of the Code of Criminal Procedure to direct registration of an FIR on the basis of the complaint dated 21st January, 2014.

3. Briefly, it is the contention of the learned Counsel appearing for the petitioner that pursuant to a complaint lodged by the owner of the subject star, an FIR was registered against the petitioner for theft. The petitioner, thereafter, filed a counter

complaint against the respondents No.4, 5, 6 and 7, alleging that such theft was committed by them. An "A" summary application was filed by the prosecution before the learned Magistrate, which came to be granted. Accordingly, the FIR registered against the petitioner came to be closed.

An FIR based on the complaint filed by the petitioner was not registered by the police and, as such, the petitioner moved the learned Magistrate for direction to register an FIR. The application came to be dismissed for non-prosecution. The revision preferred before the learned Sessions Judge was also dismissed for default. The petitioner has challenged the said order, and has sought for the relief as referred to herein above.

4. Upon hearing the learned Counsel, we find that the conduct of the petitioner in failing to remain present before the learned Magistrate, as well as before the learned Sessions Judge in the revision preferred by the petitioner itself does not justify exercise of extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. There was no justifiable reason brought to our notice justifying the absence of the petitioner on the said dates. Even looking into the allegations raised by the petitioner, specially when the FIR registered against the petitioner has already been closed, we find that there is no case made out by the petitioner to grant the reliefs sought in the present petition.

5. The main concern of the petitioner is that a false complaint was lodged against the petitioner which led to the filing of the FIR. In such circumstances, the petitioner, if so advised, may avail of such remedy available in law to get such claim adjudicated if so advised. Admittedly, the petitioner is not the owner of the subject-Star and consequently, seeking directions in the manner sought, in such circumstances, is not justifiable in exercise of extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

6. In such circumstances, and for the aforesaid reasons, the petition is rejected.

PRITHVIRAJ K. CHAVAN, J.

F. M. REIS, J.

ssm.