

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 85 OF 2017

MRS. ANITA JOSEPHINE FONSECA, REP.
THR. POA MR. MOSES COUTINHO AND 2
ORS.,

... Petitioners

Versus

THE STATE OF GOA, THR. THE P.I.
PANAJI POLICE STATION, PANAJI AND
3 ORS.,

... Respondents

Mr. Nigel Da Costa Frias and Ms. L. Sawant, Advocates for the
petitioners.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

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

Date:- 21st July, 2017

P.C.

Heard Shri D'Costa Frias, the learned Counsel for the
petitioners and Shri Rivankar, the learned Public Prosecutor for
the respondents.

2. On 06/07/2017, the learned Counsel for the petitioners had
not pressed the prayer clause (i) i.e. seeking cancellation of bail.
Thus, the relief claimed in this petition, is restricted to prayer
clause (ii).

3. It is submitted by the learned Counsel for the petitioners that
the chargesheet has already been filed in this case. According to

the learned Counsel, the chargesheet discloses that the investigation has not been carried out in a proper manner. He submits that the statement of the notary before whom, the alleged forged Power of Attorney is notarised, is also not recorded. He, therefore, submits that the matter needs to be further investigated.

4. On the contrary, Shri Rivankar, the learned Public Prosecutor has placed reliance on the decision of the Supreme Court in the case of B. JAYARAMAN VS. V. ANANDRAJ AND ANOTHER; (2015)15 SCC 758, in order to submit that the learned Magistrate, if finds that the matter needs to be further investigated, can always direct such investigation being carried out and remedy in such a case is not by way of a writ or transfer of the investigation to the Crime Branch, as prayed for. It is submitted that the investigation of the crime is already over and chargesheet is filed.

5. In so far as Crime No.229/2016 of the Mapusa Police Station is concerned, the learned Public Prosecutor states that the investigation is being carried out and would be completed within a period of three months. The Statement is accepted.

6. We have carefully considered the rival circumstances and the submissions made.

7. The Supreme Court in the case of B. JAYARAMAN (supra), placing reliance on its earlier decision in the case of BHAGWANT SINGH VS. COMMISSIONER OF POLICE; 1985(2) SCC 537, has inter alia held that at the stage of taking cognizance (after a chargesheet is filed), if the Magistrate finds that the matter needs to be investigated further, can always direct such investigation to be carried out. We, thus, find that the petition cannot favourably be considered. In such circumstances, we decline to entertain the petition, which is, accordingly, dismissed. Needless to mention that the Magistrate shall pass appropriate orders in the matter, in accordance with law, after hearing the parties.

PRITHVIRAJ K. CHAVAN, J.
SMA

C. V. BHADANG, J.