

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 82 OF 2015

DOMNIC D'SOUZA.,

... Petitioner

Versus

THE POLICE INSPECTOR, MAPUSA
POLICE STATION, MAPUSA AND 2 ORS.,

... Respondents

Shri Kapil D. Kerkar, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

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

DATE:- 14th JULY, 2017.

ORAL ORDER:

By this petition, under Article 227 of the Constitution of India, read with Section 482/483 of the Criminal Procedure Code, 1973 (Code, for short), the petitioner is challenging the order dated 30.03.2015, passed by the learned Judicial Magistrate First Class at Mapusa, in Criminal Miscellaneous Application No. 77/2011/B. By the impugned order, an application under Section 156(3) of the Code, filed by the petitioner for a direction to register a FIR against the respondent no. 1, has been dismissed.

2. The brief facts are that the respondent no. 1, who was working as a Police Sub-Inspector/Officer in charge of Mapusa Police Station, had received a complaint from the villagers of village Sodiem, alleging that the petitioner is conducting "Believer Services", by forcing people to come to his place by offering monetary bait. It was further complained that the petitioner is "brain washing", the people in joining his religion/sect. In short, it was contended that the acts of the petitioner were creating communal disharmony.

3. It appears that on the basis of the said complaint, the respondent no. 1 recorded some statements, conducted inquiry and referred the matter to the Sub-Divisional Magistrate (SDM) at Mapusa for initiating proceedings under Section 107 of the Code. It is undisputed that the petitioner was summoned in the said proceedings, which were registered as Chapter Case No.149/2008. It is further undisputed that by an order dated 03.02.2009, the said proceedings have been dropped, on the ground that, since after the filing of the proceedings, a period of six months has elapsed, without any further breach of public peace.

4. The petitioner filed a complaint dated 27.04.2010, against the respondent no. 1 with Mapusa Police Station for registering an offence against the respondent no. 1, under Sections 167, 218, 220 and 211 of IPC. As no action was taken in pursuance of the said complaint, the petitioner approached the learned Magistrate, in Criminal Miscellaneous Application No. 77/2011/B, under Section 156(3) of the Code, seeking a direction to register a FIR and to conduct investigation.

5. Before proceeding further, it would be necessary to mention that prior to the filing of the aforesaid case, the petitioner had approached the State Police Complaints Authority (SPCA) in Case No. SPCA/6/2010, for taking action against the respondent no. 1, alleging that the respondent no. 1 had sent a false report to the SDM, Mapusa, on the basis of fabrication of several documents. Before the SPCA, a report of the inquiry conducted by the Special Branch of Goa Police, under Reference No. 06/2009 dated 03.09.2009 was produced. Taking a note of the report of the Special Branch of Goa Police, the SPCA found that the report conclusively established that there was a likelihood of serious and grave risk as to disruption of peace and tranquility of Sodiem village. In that view of the matter, the

SPCA did not find it necessary to proceed with the matter and summarily rejected the complaint by order dated 31.03.2010. It is after this that the petitioner approached the learned Magistrate under Section 156(3) of the Code.

6. The respondent no. 1 filed a reply (Exhibit-D/8) before the learned Magistrate. It was contended that the complaint does not make out any *prima facie* case or any cognizable offence as alleged against the respondent no. 1. It was submitted that the respondent no. 1 had bonafidely taken action by sending report under Section 107 of the Code before the SDM in order to prevent breach of public peace. The respondent no. 1 also pointed out the order passed by the SPCA, by which, the complaint filed before the said Authority, was summarily dismissed.

7. The learned Magistrate framed a solitary point as to whether, a case for a direction under Section 156(3) of Cr.P.C. is made out and answered the same in the negative, thereby dismissing the complaint. Feeling aggrieved, the petitioner is before us.

8. We have heard Shri Kerkar, the learned Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondents. With the assistance of the learned Counsel for the parties, we have gone through the relevant record and the impugned order passed.

9. It is submitted by Shri Kerkar, the learned Counsel for the petitioner that some of the statements of the witnesses were recorded by the respondent no. 1 on 26.05.2008, while the complaint by the villagers concerned, was received on 27.05.2008. This, according to Shri Kerkar was not permissible. Secondly, it is submitted that no FIR as such was registered in this case. It is further submitted that the statements recorded on 26.05.2008 show that they were recorded at village Sodiem, while the station diary does not show that the respondent no. 1 had left the Police Station. It is next submitted that in the absence of registration of an FIR, no statements could have been recorded and no inquiry could have been conducted. It is submitted that the respondent no. 1 did not record any statements in this case. In short, it is contended that the respondent no. 1 has fabricated the record and sent a false report.

10. Shri Rivankar, the learned Public Prosecutor submits that the petitioner has to satisfy the Court about existence of sanction under Section 197 of the Code, inasmuch as the respondent no. 1 was a public servant and was acting in the course of discharge of an official duty. It is submitted that such sanction is necessary even at a pre-cognizance stage. Insofar as merits are concerned, the learned Public Prosecutor has taken us through the report of the Special Branch of Goa Police and the order passed by the SPCA, in order to submit that no case for issuance of a direction under Section 156 (3) of the Code was made out. It is submitted that the impugned order is well reasoned and does not require any interference.

11. In counter reply, it is submitted by Shri Kerkar, the learned Counsel for the petitioner that the petitioner has already moved the Government for grant of sanction, which application is pending.

12. We have given our anxious consideration to the rival circumstances and the submissions made and we do not find that any case for interference is made out. The entire basis of the claim of the petitioner is that while sending the report to the SDM, under Section 107 of the Code, the respondent had

fabricated certain documents, including the statement of the witnesses. In this regard, it would be significant to note that under Section 107 of the Code, an Executive Magistrate who receives information that any person, who is likely to commit breach of peace or disturb public tranquillity and is of the opinion that there are sufficient grounds, may require such person to show cause why he should not be ordered to execute the bond for keeping peace for such period, not exceeding one year as the Magistrate thinks fit.

13. It is now well settled that proceedings under Section 107 of the Code are preventive in nature and are aimed at preventing breach of public peace. The initiation of such proceedings is dependent on the subjective satisfaction of the learned Executive Magistrate of the existence of circumstances showing likelihood of breach of public peace at the hands of the person, who is proceeded against the proceedings under Section 107 of the Code are not in the nature of a trial. In the present case, there was a complaint lodged by some of the residents of village Sodiem on 26.05.2008, about some alleged activities of the petitioner, which were likely to lead to breach of public peace.

14. It is submitted by the learned Public Prosecutor and in our view rightly so, that the respondent no. 1 conducted certain inquiry and then sent the report to the SDM on 30.05.2008. The record reveals that the SDM in fact, did act on the said report and initiated proceedings under Section 107 of the Code, which would indicate that the SDM on the material produced had reached subjective satisfaction of there being likelihood of breach of public peace, on account of the alleged acts of the petitioner. It is undisputed that the petitioner had not challenged the initiation of the proceedings under Section 107 of the Code, which is one of the reasons considered by the learned Magistrate, while refusing to act under Section 156(3) of the Code.

15. It appears that prior to initiation of the said proceedings, the petitioner had approached the SPCA for taking action against the respondent no. 1, for alleged acts of fabricating certain documents and sending a false report. It further appears that in the meantime, the Special Branch of Goa Police had conducted an inquiry being Reference No. 06/2009 and produced the report dated 03.09.2009 before the SPCA. After taking note of the said report, the SPCA had declined to take any action.

16. We were also taken through the report of the Special Branch of Goa Police (Annexure-2), which is produced alongwith reply dated 27.04.2017, which *prima facie* shows that some persons claiming to be belonging to the “Believers Group” were indulging into certain activities, which have been mentioned in the report, which indicates that there was likelihood of breach of public peace. We would hasten to add that we have not expressed any opinion on the veracity of the said report, for the reasons that the said report is not subject matter of challenge before us. However, *prima facie*, the fact remains that there was an inquiry conducted and certain material was collected, which indicates that there was likelihood of breach of peace. Thus, all that the respondent no. 1 had done was that he had sent a report to the SDM for initiating proceedings under Section 107 of the Code. Undisputedly, no formal prosecution is launched against the respondent no. 1, which in our opinion would require registration of a formal FIR and then an investigation being conducted.

17. We find that even on the saying of the petitioner, he has sought sanction, which application is pending before the Government. Be that as it may, we have carefully gone through the impugned order passed by the learned Magistrate and we do

not find that it suffers from any infirmity so as to require interference, under Article 227 of the Constitution of India or under Section 482 of the Code.

In the result, we find that the petition is without any merit and the same is accordingly dismissed.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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