

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 126 OF 2017.

FARIDA VISHAL BANDEKAR., ... Petitioner.

Versus

STATE OF GOA THROUGH
THE SECRETARY
(HOME) AND 10 ORS., ... Respondents.

Shri S. G. Desai, Senior Advocate with Ms. Pooja Desai and Ms. Shalaka Shelke, Advocates for the petitioner.

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

**Coram:- C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.****Date:- 22nd September 2017.**

P.C.

Heard Shri S. G. Desai, learned Senior Counsel for the petitioner and Shri S. R. Rivankar, learned Public Prosecutor for the respondents for sometime.

2. By this petition under Article 226 of the Constitution of India and Section 482 of Cr.P.C., the petitioner is seeking following substantive reliefs:-

“A. For a writ of certiorari or any other writ, direction, order in the nature of certiorari or any other appropriate writ direction order under Article 226 of the Constitution of India quashing and setting aside the impugned FIRs and impugned chargesheets after calling for the records of the

case and examining them for legality, propriety and correctness;

- B. For a writ of mandamus or any other writ, direction, order in the nature of mandamus or any other appropriate writ direction order under Article 226 of the Constitution of India commanding the Respondent no.11 to register an appropriate FIR against the Respondents No.2 to 7, 9 and 10 on the basis of the three complaints dated 29.12.2015, 01.01.2016, 02.01.2016, Exhibits P-1, P-2, P-3 to the petition under appropriate sections of IPC or any other applicable penal law and to prosecute them according to law in an appropriate court of criminal jurisdiction.”

3. It appears that there is a dispute between the petitioner and her husband on one hand and the step son of the petitioner over a flat situated at Altinho, Panaji Goa. The petitioner had lodged a complaint to the Police Station, Panaji alleging that there are certain illegal activities carried out in the said flat. It further appears that the petitioner had visited the Panaji Police Station in connection with said information. According to the petitioner, the concerned Police Inspector (respondent no.2) and his subordinates assaulted the petitioner and committed acts outraging her modesty.

4. On the contrary, according to the respondent no.2, it is the petitioner who committed acts, with an intention to prevent him from discharging his duties.

5. Indisputably, on the basis of the complaint lodged by the respondent no.2 and one another, the petitioner is facing prosecution in two Criminal Cases before the Judicial Magistrate, First Class, Panaji being Criminal Case nos.57/2016/D and 150/2016/C in which charge is yet to be framed. The petitioner in this petition is seeking quashing of the two FIRs and the two criminal cases and is further seeking a direction to the respondent no.11 i.e CBI to register an FIR against the respondent nos.2 to 7, 9 and 10 on the basis of the three complaints dated 29.12.2015, 01.01.2016, 02.01.2016 lodged by her under appropriate Sections of IPC.

6. In this case it is undisputed that the petitioner has approached the Human Rights Commission with a complaint on 1.1.2016 as also the State Police Complaint Authority (SPCA). Both these proceedings i.e. before the Human Rights Commission and SPCA are stated to be pending.

7. In such circumstances, Shri Desai, the learned Senior Counsel for the petitioner, on instructions, seeks leave to withdraw the petition with liberty to approach the learned Magistrate with an application under Section 156(3) of CR.P.C.

8. The petition is disposed of as withdrawn with liberty as prayed. It is obvious that in the event the learned Magistrate decides to grant the application under Section 156(3) of Cr.P.C., the investigation shall be entrusted to the officer other than the respondent no.2. In the event the petitioner files an application under Section 156(3) of Cr.P.C., the learned Magistrate shall decide the same on its own merits and in accordance with law. We make it clear that we have not examined the merits of the rival contentions, which are expressly left open.

PRITHVIRAJ K. CHAVAN, J.

C. V. BHADANG, J.