

IN THE HIGH COURT OF BOMBAY AT GOA**Criminal Writ Petition NO. 83 OF 2017**

Sudip Tamankar.
Son of Narayan Tamankar,
42 years of age,
R/o CT-2, Chandradeep Apartments,
Ribandar, Tiswadi- Goa. Petitioner

V e r s u s

1. State
(Through Police attached to
Porvorim Police Station),
Porvorim-Goa.
2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji-Goa. Respondents

Shri G. Teles, Advocate for the Petitioner.

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

CORAM: C. V. BHADANG, J.

DATE: 26th July, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned Public Prosecutor waives service. Heard finally by consent of parties.

2. The petitioner (accused) is challenging the judgment and order

dated 7/11/2016 passed by the learned Additional Sessions Judge, Mapusa in Criminal Revision Application No.34/2016. By the impugned judgment, the learned Session Judge has affirmed the order of the learned Magistrate to the extent of directing framing of charge against the petitioner for the offences punishable under sections 353, 186 and 380 of I.P.C. (wrongly mentioned as section 180 of I.P.C in the impugned judgment) The learned Sessions Judge has however set aside the order to the extent of directing the framing of charge under section 504 of I.P.C.

3. The petitioner claims to be an RTI activist and had sought certain information under the Right to Information Act. According to the complaint lodged by Mrs. Vasanti H. Pascodkar, the Under Secretary Law (Estt.), the petitioner on 15/10/2013, at about 11.30 a.m. went to the office of the Under Secretary Department of Law and Judiciary (Establishment) and had allegedly misbehaved with the office staff and had refused to accept the information supplied by the Assistant. It is also alleged that the petitioner uttered certain words in bad taste and snatched the papers from the government file and took the information forcibly. It was complained that the Assistant pleaded with the petitioner and tried to pacify him, however, the petitioner uttered certain filthy words in bad taste. It was on the complaint of the Under Secretary that an offence came to be registered at the Police

Station, Porvorim and after investigation a charge sheet came to be filed against the petitioner before the learned Judicial Magistrate First Class, at Mapusa.

4. The learned JMFC by an order dated 29/2/2016 directed framing of charge against the petitioner for the offences punishable under section 504, 353, 186 and 380 of I.P.C. The learned Magistrate, however, discharged the petitioner from the offences punishable under section 509 of I.P.C. The petitioner carried the matter in Revision before the learned Sessions Judge, who discharged the petitioner from yet another offence under section 504 of I.P.C, however, maintained the order in so far as the offences under sections 353, 186 and 380 of I.P.C. Hence this petition.

5. I have heard Shri Teles, the learned counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent/State. With the assistance of the learned counsel, I have gone through the record and the impugned order.

6. It is submitted by the learned counsel for the petitioner that the learned Magistrate could not have taken cognizance of the offence punishable under section 186 of I.P.C in the absence of the complaint being filed by the

concerned public servant. The learned counsel has placed reliance on the provisions of section 195 of Cr.P.C. which according to the learned counsel creates a bar for the Court from taking cognizance of the offence punishable under section 172 to 188 (both inclusive), except upon a complaint in writing lodged by the such officer/public servant. The learned counsel does not dispute that this contention was not raised either before the learned magistrate or before the learned Sessions Judge. He, however, submits that this being a pure question of law which goes to the root of the matter can be allowed to be raised before this Court.

7. In so far as the offence under section 353 is concerned, the contention is that once the learned Sessions Judge has discharged the petitioner of the offence punishable under section 504, the charge could not have been directed to be framed under section 353 of I.P.C.

8. The learned Public Prosecutor submits that the offences under section 353 of I.P.C and 504 of I.P.C are distinct offences and discharge from the offence punishable under section 504 of I.P.C has no bearing on the question of framing charge under section 353 of I.P.C. In so far as the bar under section 195 of Cr.P.C. is concerned, the learned Public Prosecutor in all fairness concedes that in the absence of complaint by the concerned public

servant, cognizance of the offence under section 186 of I.P.C could not have been taken.

9. I have carefully considered the rival circumstances and the submissions made. At the outset it needs to be mentioned that under section 195 of Cr.P.C., no Court shall take cognizance of any offence punishable under section 172 to 188 (both inclusive) of I.P.C, except on the complaint in writing of such public servant or of any other public servant to whom he is administratively subordinate. It can thus clearly be seen that the Court could not have taken cognizance of the offence under section 186 in the absence of a complaint under section 2(d) of Cr.P.C of the concerned public servant. Although this ground was not raised before any of the courts below, having regard to the fact that the question is a pure question of law which goes to the root of the matter, namely, the jurisdiction of the learned Magistrate to take cognizance, I find that this ground can be entertained here and the order to the extent of directing framing of charge under section 186 of I.P.C cannot be sustained.

10. In so far as the offence under section 353 of I.P.C is concerned it is clear that the offence under section 504 of I.P.C is a distinct offence and the discharge of the petitioner for the offence punishable under section 504 of

I.P.C would not be relevant to seek discharge for the offence punishable under section 353 of I.P.C. I have carefully gone through the complaint of the Under Secretary (Law) and the statement of Suraj Gaonkar and also Mrs. Pinki Kunkolkar and I find that there is prima facie case for framing of charge under section 353 and section 380 of I.P.C. In the result the petition is partly allowed. The impugned order directing framing of charge under section 186 is hereby set aside. The order directing framing of charge under section 353 and 380 of I.P.C is hereby confirmed. Rule is made partly absolute in the aforesaid terms.

C. V. BHADANG, J.

ap/-