

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**CRIMINAL WRIT PETITION NO.59/2013**

1. Mustaq Ahmed Presently in Jail Sada,  
Vasco.
2. Vinesh Narayan Faldessai,
3. Jovita Ryan Dos Remedios Pinto

All Under Trial Prisoners Presently lodged in the  
Sub Jail, Sada,  
At Vasco-Da-Gama.

**Petitioners**

**Versus**

1. State of Goa,
2. Mahesh Fadte, Jailor, Sub Jail Sada,  
at Vasco-Da-Gama.
3. Uday Shirodkar, Asst. Jailor, Sub Jail Sada,  
at Vasco-Da-Gama.
4. Tulshidas Gadekar, Asst. Jailor, Sub Jail Sada,  
At Vasco-Da-Gama.
5. Kaitan Godinho, Asst. Jailor, Sub Jail Sada,  
At Vasco-Da-Gama.
6. Rama Pandhari, Asstt. Jailor, Sub Jail Sada,  
at Vasco-Da-Gama.
7. Supdt. Of Jail, Sub Jail Sada,  
At Vasco-DA-Gama.
8. I.G.Prison, Panaji.

**Respondents.**

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Shri Ryan Menezes, Advocate for the petitioners.  
Shri S.R. Rivankar, Public Prosecutor for the Respondents.

**CORAM : F.M.REIS & N.D.SARDESSAI, JJ.**  
**DATED : 3<sup>rd</sup> APRIL, 2017.**

**ORAL JUDGMENT:(PER NUTAN D. SARDESSAI, J.)**

1. Heard Shri Ryan Menezes, learned Advocate for the petitioners and Shri S.R. Rivankar, learned Public Prosecutor for the respondents.

2. Rule. Rule made returnable forthwith with the consent of the learned counsel appearing for the parties. Shri S.R.Rivankar, learned Public Prosecutor waives service on behalf of the respondents.

3. It was the contention of Shri Menezes that the petitioner - a prisoner was subjected to assault and effect thereof was supplemented on the basis of the medical certificate indicating the nature of the assault on the prisoner. Besides this Court in another case of Rajendra Singh V/s State of Goa (Criminal Writ Petition No.114/2012) had passed the judgment and order dated 19.07.2016 whereby compensation was ordered to be paid to the prisoner for the assault suffered by him in the course of fighting in the custody. Moreover, there

was the report of the Additional Sessions Judge forming a part of the records and therefore, an offence had to be registered and inquiry had to be conducted in the matter.

4. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State conceded in fairness that an offence had to be registered based on the complaint of the prisoner. He too adverted to the report of the Additional Sessions Judge, who had visited the prison and drawn the report. He however contended that the issue of award of compensation had to be kept open based on the investigation which would be conducted on the basis of the registration of the offence. It was also the contention of Shri Rivankar, learned Public Prosecutor that the jail officials too were assaulted by the prisoner and therefore on account of a counter complaint, no offence came to be registered based on the complaint of the prisoner.

5. We have examined the records including the complaint of the prisoner under which he alleged that he was called by the jail guards to the office where he was abused and thereafter assaulted brutally with sticks, blows and kicks. He had suffered serious injuries and hence, his complaint to take necessary action against the said guards and punish them for their said acts. We have otherwise considered the medical

certificate of the prisoner who was examined by the Doctor at the Cottage Hospital, Chicalim Vasco and found that there was no history of head injury nor any ENT bleed. On examination he was found to have **superficial abrasion** and diagnosed as a case of blunt trauma to chest with soft tissue injury on the right shoulder and left upper limb.

6. The respondents had placed material on record that they had taken action against the erring officials in the Sub-jail by suspending the jailor and transferring others from the jail on the basis of the report furnished by the Jailor, Sub Jail Sada, Vasco. Besides, disciplinary proceedings were contemplated against one of the jailors who was placed under suspension while another i.e. an Assistant Jailor was transferred to the Central Jail, Aguada with immediate effect. He had also asserted on oath that the petitioner had himself become aggressive and attacked the Assistant Jailor and in the process of separating the petitioner from attacking the Assistant Jailor, two jail guards had used some force in order to bring the petitioner under control but without any intention of causing injuries and they had otherwise acted in a bonafide manner.

7. We have also perused the report drawn by the learned Additional Sessions Judge, South Goa Margao in which she had

revealed that she had recorded the statement of the petitioner Mustaq Ahmed who revealed that he was subjected to assault by the jail guards. The assault stopped on the intervention of the Assistant Superintendent and thereupon he was taken to the Chicalim hospital, Vasco and thereafter on the following day he was referred to the G.M.C. Hospital for treatment. The report by the Additional Sessions Judge also indicates that the petitioner had also attacking the jail guards and assaulted them and that he was separated in that course. From the report of the learned Additional Sessions Judge it is also borne out that the petitioner too was instrumental in attacking the jail guards while they were trying to separate him and that he was rude in his behaviour and that any injuries suffered by him were in the course of the process of separating him.

8. In Rajendra Singh (*supra*), the learned Additional Sessions Judge had found from the evidence of the three doctors who had examined him that he had suffered multiple bruises and was diagnosed as a case of assault. The learned Additional Sessions Judge had also concluded that the injuries on his person as borne out from the medical evidence apart from his statement could be caused by sticks and lathies and concluded on the basis of the available evidence that he had been assaulted by the Jail Authorities with dandas. Besides, in

the facts of that case it was also found by the learned Additional Sessions Judge that the higher Jail Authorities had tried to suppress the true facts of the incident, given a different colour as if the injuries suffered by him were in the course of a fight with another inmate and concluded that the involvement of the Jail Authorities in assaulting the petitioner could not at all be ruled out. In the said case this Court had held that the petitioner was subjected to assault while undergoing his imprisonment which was a clear reflection of the violation of his right to life and in those set of circumstances awarded the compensation in his favour for the pain and suffering apart from the torture at the hands of the Jail Authorities. The judgment in Rajendra Singh is thus clearly distinguishable and can find no parity with the case of the present petitioner.

9. Having examined the records including the medical certificate of the petitioner, it was incumbent on the jail authorities to lodge a complaint against the jail officials who were instrumental in assaulting the petitioner. As such, we find it appropriate in the circumstances of the case and deem it to direct the registration of the FIR based on the complaint of the petitioner. The issue of any compensation to the petitioner would not arise as is sought to be contended by Shri Menezes, learned Amicus Curiae on his behalf by seeking to draw parity

with the case of Rajendra Singh (supra), as compensation, if any, to be awarded in his favour would arise based on the investigation which is carried out on the registration of the offence. Rule is made absolute. The petition is accordingly disposed off.

**NUTAN D.SARDESSAI, J**

**F.M. REIS, J**

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