

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 7 OF 2017

DR. RUANDO E. J. J. DE SA., ... Petitioner
Versus
STATE, AS REP. BY THE OFFICER IN
CHARGE PORVORIM POLICE STATION,
PORVORIM AND 2 ORS., ... Respondents

Ms. D. Tulkar, Advocate for the Petitioner.

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

Coram:- C. V. BHADANG, J.

Date:- 13th February, 2017

ORAL ORDER:

Heard the learned Counsel for the petitioner and the learned Public Prosecutor for the respondents.

2. The petitioner is challenging the judgment and order dated 04.12.2015, passed by the learned Special Judge at Panaji in Criminal Miscellaneous Application No. 23/2014 (old Criminal Miscellaneous Application No. 62/2012). By the impugned order, the application filed by the petitioner, under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C., for short), has been dismissed.

3. The case made out in the application, filed before the learned Special Judge, is that some government officials, ex-Minister for health and others had hatched a criminal

conspiracy and committed criminal breach of trust and cheating by creating false documents, misleading the government authorities, which led the applicant being deprived of getting a promotion, for which he was due and eligible.

4. The petitioner sought a direction to register an FIR for the offences punishable under Sections 161, 162, 164, 165-A, 166, 167, 405, 409, 415, 420, 464, 468, 469, 471, 107, 120-B and 34 of the Indian Penal Code read with Sections 6, 7, 8, 9, 10, 11, 12 and 13 of the Prevention of Corruption Act, 1988.

5. In short, according to the petitioner, the then under Secretary (Health) had moved a note showing the date of regular appointment of Dr. Sanjeev Dalvi as 14.10.1990, which was a deliberate manipulation in furtherance of a conspiracy hatched in connivance of some political superiors. It was contended that 14.10.1990 was in fact, the date on which the Goa Public Service Commission (GPSC) had advertised the post of Senior Surgeon and cannot for any purpose be considered as date of appointment of Dr. Dalvi. It was contended that the services of the petitioner were regularised by the GPSC w.e.f. 07.01.1991, while Dr. Dalvi had joined service in Government of Goa on 02.07.1991, as Dr. Dalvi was earlier serving in Maharashtra. In other words, it was contended that the petitioner was senior to Dr. Dalvi and by the note moved by the Under Secretary (Health), Dr. Dalvi came to

be shown as Senior, as being appointed on 14.10.1990.

6. It appears that the then Joint Secretary (Health) had approved the note put up by the Under Secretary (Health) and subsequently, by the Health Minister.

7. As noticed earlier, the dispute is inter se between the petitioner and Dr. Dalvi. It is undisputed that the petitioner has since retired from services prior to 2013. It is further undisputed that the petitioner had challenged the seniority of Dr. Dalvi in Writ Petition No.364/2012, claiming that the seniority of Dr. Dalvi which was reckoned on the basis of the note put up by Under Secretary (Health), was not correct. A case of fraud and conspiracy was specifically tried to be made out in the said petition. This Court by judgment and order dated 19.11.2013, has dismissed the said petition inter alia on the ground of delay and laches. A perusal of para 13 would show that apart from the issue of delay and laches, this Court had also considered the provisions of Rules 5 and 6 of the Goa Government (Seniority) Rules, 1967 and had refused to accept the claim of the petitioner.

8. Coming back to the present petition, the learned Special Judge after noticing the judgment in Writ Petition No. 364/2012 and finding that the case of manipulation and conspiracy has not been accepted by this Court, had rejected the application under

Section 156(3) of Cr.P.C. The learned Special Judge also considered that the petitioner had filed the said application almost 12 years after the note was put up by the Under Secretary (Health) in the year 2000.

9. It is submitted by the learned Counsel for the petitioner that the issue about conspiracy and creation of false documents is independent of the civil dispute as to inter-se seniority between the parties. The learned Counsel was at pains to point out that this Court has dismissed the Writ Petition mainly on the ground of delay and laches, which cannot come in the way of the learned Special Judge in directing the registration of the FIR. The learned Counsel has pointed out observations in para 13 of the impugned order wherein, the learned Special Judge has found that the date mentioned in the note of the Under Secretary (Health) in connection with the appointment of Dr. Dalvi, is factually incorrect and the record shows that Dr. Dalvi was appointed by GPSC for the post of Senior Surgeon on 14.12.1990. It is submitted that once the learned Special Judge had accepted the same, the application under Section 156(3) of Cr.P.C., could not have been rejected.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. It is true that the learned Special Judge

has observed in para 13 that the date mentioned by the Under Secretary (Health) was in correct. I find that the same by itself cannot tantamount to case being made out for any conspiracy or an intentional manipulation. At any rate, the date of appointment of Dr. Dalvi and the date of appointment and regularisation of the petitioner has significance and relevance only with regard to the inter-se seniority of Dr. Dalvi and the petitioner. As noticed earlier, the petitioner had challenged the fact of Dr. Dalvi being showed senior, in Writ Petition No. 364/2012, inter-alia on the ground of a conspiracy being hatched and a manipulation being done in the matter of putting up of the office note by the Under Secretary (Health). That petition has been dismissed. It is true that the petition is dismissed mainly on the ground of laches, however, in para 13 of the said judgment, the Division Bench has referred to Rule 6 of the Goa Government (Seniority) Rules, 1967 in order to hold that the Departmental Promotion Committee (DPC) had placed Dr. Dalvi above the petitioner in the seniority in the year 2005. In any event, in my considered view, the dispute is predominantly of a civil nature and a service dispute and I do not find that the impugned order, dismissing the application under Section 156(3) of Cr.P.C. suffers from any infirmity, so as to require interference in the revisional jurisdiction of this Court.

The Revision is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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