

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 113 OF 2017

CEDRIC BOSCO SAVIO LOBO., ... Petitioner
Versus
MR. SALVADOR LOBO AND 2 ORS., ... Respondents

The petitioner in person.

Coram:- C. V. BHADANG, J.

Date:- 11th July, 2017

P.C.

Heard the petitioner, who is appearing in person.

2. The petitioner is challenging the order dated 20/04/2017, passed by the learned Trial Court in Criminal Misc. Application No.2/2017/E. By the impugned order, the learned Trial Court has dismissed the application, by which the petitioner has sought initiation of proceedings for perjury.

3. The brief facts are that late father of the petitioner, had filed a suit, in which he had obtained injunction against the respondents/ defendants not to effect any construction in the suit property. On the death of his father, the petitioner is now arrayed as plaintiff in the suit. The petitioner filed an application Under Order XXXIX, Rule 2(A) read with Rule 11 of C.P.C., claiming that there was breach of injunction. The respondents

(original defendant nos.1(a) and 1(c)) filed a reply to the said application and in para 11 thereof, they specifically denied that a new room or compound wall has been constructed. It appears that the petitioner filed an application for production of certain documents before the learned Trial Court, to which the respondents filed a reply on 08/12/2015 and in para 3 thereof, they denied that the said defendants i.e. defendant nos.1(a) and 1(c), in defiance of the order of the Court, have carried out construction of the compound wall or the room. These two statements in the replies dated 09/04/2015 and 08/12/2015, according to the petitioner, are contradictory and both these statements being on oath, it is contended that the defendant nos.1(a) and 1(c) have made false statement on affidavit. This is the reason why the petitioner wants the Trial Court to initiate action for perjury.

4. It is undisputed that the application for taking action for breach of injunction, which was filed by the petitioner under Order XXXIX, Rule 2(A) read with Rule 11 of C.P.C., has been dismissed, which order was unsuccessfully challenged by the petitioner before the learned District Judge and which is now subject matter of challenge before this Court in an independent proceeding.

5. It is submitted by the petitioner that both the statements

being on oath, amount to evidence and two contradictory statements would indicate that one of them is false. The petitioner places reliance on the decision of the Supreme Court in the case of SUO MOTO PROCEEDINGS AGAINST MR. R. KARUPPAN, ADVOCATE; 2001(3) SCR 750 and the decision of this Court in the case of CTR MANUFACTURING INDUSTRIES LIMITED Vs. SERGI TRANSFORMER EXPLOSION PREVENTION TECHNOLOGIES PVT LTD AND OTHERS (C. A. No.1282/2011 in AO No.102/2011, dt.30/10/2012). It is submitted that the learned Trial Court was in error in refusing to take action for perjury. The petitioner has pointed out the findings recorded by the Trial Court in para 34 of the order dated 17/08/2016 on the application under Order XXXIX, Rule 2(A) read with Rule 11 of C.P.C., in which the Trial Court has found that the compound wall, as well as the suit room is constructed after 2009. He, therefore, submits that the said application could not have been dismissed.

6. I have considered the circumstances and the submissions made.

7. At the outset, it is necessary to mention that the order dated 17/08/2016, passed in CMA No.28/2015 is subject matter of challenge in W.P. No.576/2017 and thus, the contentions about the legality of the said order cannot be examined in these

proceedings. It is well settled that for initiation of the proceedings for perjury, a specific and clear case has to be made out as to the concerned party giving false evidence. I have carefully gone through the contents of para 11 of the reply dated 09/04/2015 and para 3 of the reply dated 08/12/2015. All that the defendant nos.1(a) and 1(c) have done is that they have specifically denied the construction of the room and the compound wall by them. In any event, the contents of two replies, if compared, are insufficient to hold that there is any false statement as such made. It is, however, observed that if at the trial, the Court finds that there are any false averments made by the concerned defendants, it will always be open to the learned Trial Court to initiate appropriate proceedings. However, at this stage, the material is insufficient for taking action for perjury.

8. In the case of SUO MOTO PROCEEDINGS AGAINST MR. R. KARUPPAN, ADVOCATE (supra) before the Supreme Court, the respondent had filed a petition in the name of Madras High Court Advocates' Association, claiming to be its President, which was found to be false. It can, thus, be seen that the facts are clearly distinguishable, so is the case with the judgment in CTR MANUFACTURING INDUSTRIES LIMITED (supra) of this Court. The question whether there is any false evidence given or statement is made, would obviously

depend upon the facts and circumstances of the case. As observed earlier, if during the trial of the suit, the Court comes to such conclusion, it is always open to the Trial Court to initiate appropriate proceedings, if found necessary, in accordance with law.

9. With this, no case for interference is made out. The petition is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA