

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL WRIT PETITION NO. 108 OF 2017.**

Chanbi Oil Khan,
daughter of Oil Khan,
60 years of age, Service,
Indian National, Residence
of H. No.15/C, Patto Govt.
Qtrs, Panaji-Goa.

.... Petitioner.

Vs.

1. State of Goa,
Through Police Inspector,
Panaji Police Station,
Panaji-Goa.

2. Public Prosecutor,
High Court of Bombay,
Panaji-Goa.

.... Respondents.

**Coram:-C. V. BHADANG &
PRITHVIRAJ K. CHAVAN,JJ.**

Date :-14th July, 2017.

Shri N. Shiroadkar, Advocate for the petitioner.

Shri P. Faldessai, Addl. Public Prosecutor for the respondent.

JUDGMENT (Per C. V. BHADANG, J)

Rule, made returnable forthwith. Shri P. Faldessai, learned Addl. Public Prosecutor waives service. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the

petitioner is seeking quashing of proceedings in Special Criminal case No.75/2015 before the learned Children's Court at Panaji.

3. Brief facts are that on the basis of the complaint lodged by one Shri Sadat Haider Ali on 7.9.2014 an offence punishable under Section 2(m)(i) read with Section 8(2) of the Goa Children's Act, 2003 read with Sections 341 and 506(ii) IPC was registered against the petitioner. On completion of the investigation a chargesheet is filed against the petitioner under aforesaid Sections before the learned Children's Court. It is undisputed that Children's Court has framed the charge against the petitioner for the aforesaid Sections on 14.3.2017.

4. The Complainant Sadat Haider Ali happens to be the father of one Shadman aged 13 year who was schooling in the Mustifund High School in VIIIth Standard. It was alleged that on 6.9.2014 at about 17.14 hours, the complainant received a phone call on his mobile no. 9673443306 from a land line no.08322437124. The complainant claims that his sister in law i.e the petitioner was on the line and she informed the complainant that his son Shadman is in her custody and she will kill him. According to the complainant on receipt of this information, he rushed to the KTC bus stand Panaji and then proceeded to Mustifund High School via Patto as his son was attending tuition classes after the school. When the complainant reached near Sharamshakti Bhavan he met his son on the way and

found him crying. According to the complainant minor Shadman informed him that while he was coming from school and when he had reached near Anjuman School, Panaji one lady came from behind and caught his shoulder and put some red and yellow colour powder on his forehead. She was accompanied by one unknown male. It was further claimed that said lady then asked the said unknown male to hold the hand of Shadman and she then went to a PCO. After sometime she returned and caught the hand of Shadman, however, he managed to escape. During the course of investigation, the Investigating Officer recorded the statement of the child, collected Call Data Records (CDR) of the mobile of the complainant. It further appears that an Identification Parade came to be conducted in which the minor identified the petitioner.

5. It is submitted by the learned Counsel for the petitioner that the petitioner who is working as a teacher was attending the school on the date and time of the alleged incident. He submits that there are material contradictions in the statement of the complainant, the minor and the contents of the spot panchanama. He submits that the complaint was lodged on the next day i.e on 7.9.2014. The learned counsel for the petitioner has placed reliance in the decision of the Supreme Court in the case of **Harshendra Kumkar D. Vs. Rebatilata Koley Etc., 2011 AIR (SC) 1090**, in order to submit that the copy of Attendance Register kept by the school where the petitioner is working can be considered and relied

upon even at this stage, being a public document. These are the circumstances which according to the learned Counsel for the petitioner are sufficient for quashing the proceedings.

6. Shri Faldessai, the learned Addl. Public Prosecutor states that the learned Children's Court has already framed the charge and had thus come to the prima facie conclusion that a case of the involvement of the petitioner is made out. He points out that this is not the stage where the statement or evidence can be appreciated threadbare which can only be done at the stage of trial. The learned Addl. Public Prosecutor has pointed out the CDR details in order to submit that the claim of the complainant that there was a call received on his mobile number from a land line number has been verified. He also points out that on the same day at about 21.24 hours to 21.27 hours there were about four calls made from the mobile phone of the complainant to the child helpline no.1098. It is submitted that complaint in such circumstances cannot be said to be belated.

7. We have carefully considered rival circumstances and submissions made.

8. At the outset, it is necessary to mention that the petitioner is coming with defence of alibi. According to the petitioner on the date and time of incident the petitioner was present

in the school which the petitioner wants to demonstrate from the entries in the Attendance Register of the teachers which is maintained at the school. We do not find that the submission can be accepted. This is because the burden to prove the defence of alibi is on the petitioner/accused, which has to be discharged at the time of the trial. Prima facie we are unable to accept that the Attendance Register maintained in the school where the petitioner is working can be relied upon at this stage to accept the case put forth by the petitioner. The decision in the case of **Harshendra Kumkar**, (supra) cannot come to the aid of the petitioner for more reasons than one. That was a case arising out of prosecution under Section 138 of the Negotiable Instruments Act, 1881 and the question was whether the director who had resigned and thus ceased to be a director of the company can be prosecuted. The learned Counsel for the petitioner has placed reliance upon observation in paragraph 19 of the judgment which would make it explicit that the documents placed on record to demonstrate that the concerned accused had ceased to be the director of the company were neither disputed nor controverted by the complainant. We find that the present case is distinguishable. It was also tried to be suggested at one stage that the attendance register maintained at the school would be a public document not requiring any formal proof. We would tend to disagree. There is nothing on record as to what are school timings. The incident is alleged to have happened at about 17.14 hours. It is here that the the school timing would be relevant. In short what we want to

say is that these aspects will have to be gone into at the trial of the case.

9. Coming to the case of the prosecution, we find that prima facie there is evidence of CDR which show that there was a call made from land line no.08322437124 to mobile no.9673443306 of the complainant at 17.08 hours. The learned Additional Public Prosecutor submitted that the said land line number has been identified to be that of the PCO near the spot of the incident. Thus looking to the statement of the complainant, the child victim as also the evidence about call details, we find that there is prima facie case made out against the petitioner. It is neither necessary nor appropriate to appreciate the evidence in details at this stage so as to record any final or concluding opinion inasmuch as trial is still pending before the learned Children's Court. In our considered view, no case for quashing of prosecution is made out.

10. In the result the petition is dismissed. Rule is discharged. Needless to mention that the observations made herein are essentially of a prima facie nature and the learned Children's Court shall not be influenced by the same at the trial.

PRITHVIRAJ K. CHAVAN,J.

C. V. BHADANG,J.