

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 149 OF 2017

Mr. Mahesh G. Kerkar
 Son of G. Kerkar,
 Major in age,
 Indian National,
 Occ: Police Sub Inspector,
 Posted at Pernem Police Station,
 R/o S-1, George Apartment,
 Fountainhas, Mala,
 Panaji-Goa.

Petitioner.

Versus

1. Goa Human Rights Commission
 Through its Secretary
 Having office at Panaji -Goa

2. Mrs. Soniya Manoj Kedar
 W/o Manoj Kedar
 Major of age, Indian National,
 R/o H.No.90, Near Mhalsa
 Giroba Temple, Madhlamaj,
 Mandrem - Goa.

3. Mr. Manoj Kedar
 S/o Fati Kedar,
 Major of age, Indian National,
 R/o H.No.90, Near Mhalsa
 Giroba Temple, Madhlamaj,
 Mandrem - Goa.

4. State of Goa,
 Through Chief Secretary,
 Having office at Porvorim,
 Secretariat Porvorim
 Bardez-Goa.

. **Respondents**

Shri Galileo Franciso Teles, Advocate for the petitioner.
 Shri Sidhesh Shet, Advocate for Respondent nos. 2 and 3.
 Shri M.Amonkar, Additional Public Prosecutor for respondent
 no.4.

**CORAM:- C.V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.**
DATE:- 7th DECEMBER, 2017.

ORAL JUDGMENT: (Per C.V. Bhadang, J.)

1. Rule made returnable forthwith. Shri Sidhesh Shet, learned counsel waives notice on behalf of Respondent nos. 2 and 3 and Shri M.Amonkar, learned Additional Public Prosecutor waives notice on behalf of respondent no.4. Heard finally by consent of the parties.

2. The challenge in this petition, under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (Code, for short) is to the Enquiry Report/Order passed by the Goa Human Rights Commission (Commission, for short) in Proceedings No.9/2014. By the impugned order, the Commission has made the following recommendations:

(i) The Police Officer now below the rank of Deputy Superintendent of Police shall carry out further investigation by invoking the provisions of Section 173 (8) of Criminal Procedure Code;

(ii) The Director General of Police, Panaji – Goa shall initiate appropriate action against the Investigation Officer for carrying out the investigation in a very casual and haphazard manner.

3. The petitioner has not pressed for the challenge to para 1 of the recommendations, as set out above. Thus, the challenge in this petition is restricted to para 2 by which the Director General of Police, Panaji, has been directed to initiate appropriate action against the petitioner-Investigating Officer for carrying out the investigation in a casual and haphazard manner.

4. The brief facts necessary for the disposal of the petition may be stated thus:

That the second respondent-complainant lodged a complaint on 19th December, 2013 with Police Station, Pernem about her husband Manoj Kedar having gone missing. Subsequently, Manoj Kedar was found in the garbage dump with hands and the legs tied with grievous injuries on his body. On the basis of the said complaint, an offence was registered with Anjuna Police Station under Sections 143, 147, 148, 365, 342, 328, 326 read with Section 149 IPC against one Rupesh Mhamal and three or four other unknown persons. It appears that the investigation of the said crime was entrusted and was carried out by the petitioner, who was at the relevant time working as Police Sub Inspector (PSI) at Anjuna Police Station. The petitioner, after conducting the investigation, filed 'A Final Summary' before the learned Judicial Magistrate First Class at Mapusa on 13th January, 2015. The learned Judicial Magistrate First Class at Mapusa refused to accept the 'A Final Summary

Report` and directed further investigation to be conducted in the case. It appears that the further investigation in the matter was carried out by PSI Vishal Mandrekar, who after the investigation filed a chargesheet, against Rupesh Mhamal and others before the learned Judicial Magistrate First Class at Mapusa on 7th October, 2016. In the mean time, the second respondent approached the Commission, with a complaint on 20th January, 2014. According to the second respondent, the petitioner conducted investigation under Crime in a casual and lackadaisical manner and filed `A Final Summary Report'.

5. The Commission issued a notice to the petitioner, who filed his reply. On hearing the parties, the Commission came to the conclusion that the alleged incident, as reported by the second respondent, had taken place on 18th December, 2013 and the second respondent initially filed missing report on 19th December, 2013. Manoj Kedar, the husband of the second respondent was found in the garbage dump on 20th December, 2013 at Assagaon. Manoj Kedar had identified one of the assailants to be Shri Rupesh Mhamal. The Commission came to the conclusion that the offence committed by the accused was of a serious nature and it was incumbent on the part of the Investigating Officer to investigate thoroughly to find out the truth. The Commission further found that the petitioner - Investigating Officer sent a communication to the

Superintendent of Police (North) dated 28th July, 2014 to verify call records i.e. after a period of about seven months and there was no explanation or justification for the delay in verification of the call records. In short, the Commission came to the conclusion that the conduct of the petitioner was unjustified and in that view of the matter, had directed the Deputy Superintendent of Police to carry out further investigation by invoking the provisions of Section 173 (8) of the Code. It is undisputed that even prior to this order further investigation was carried out by Shri Vishal Mandrekar and the charge-sheet is filed against Rupesh Mhamal and others. As noticed earlier, we are presently concerned with the direction issued by the Commission to initiate proper action against the petitioner.

6. We have heard Shri Teles, learned counsel for the petitioner, Shri Sidhesh Seth, learned counsel for respondents no.2 and 3 and Shri Amonkar, learned Additional Public Prosecutor for respondent no.4. With the assistance of the learned counsel for the parties, we have gone through the record.

7. It is submitted by Shri Teles, the learned counsel for the petitioner that the cognizance of the complaint taken by the Commission was beyond jurisdiction of the Commission. It is pointed out that the incident had allegedly happened on 18th

December, 2013 and the second respondent without waiting for a reasonable period approached the Commission on 20th January, 2014 alleging that the investigation conducted by the petitioner was not fair. Secondly, it is submitted that the report of the internal investigation conducted by the Commission was not furnished to the petitioner which has resulted into the breach of the principles of natural justice. On behalf of the petitioner, a reliance is placed on the decision of the Jharkhand High Court in the case of **Shiv Chandra Prasad Singh Vs. State of Jharkhand, CDJ 2006 Jhar HC 096** and in particular para 8 of the judgment.

8. It is submitted that the second respondent has neither alleged nor shown that there was any malice or intention on the part of the petitioner not to carry out the investigation in a proper manner or to screen the offenders. It is submitted that the petitioner had done all that was within his powers to investigate the crime. It is submitted that the Commission ought not to have issued direction for taking departmental action against the petitioner.

9. The learned counsel for respondents no.2 and 3 has supported the impugned order.

10. It is submitted that the conduction of a fair

investigation is a part of fundamental right and also a part of human right which has been breached in this case. It is submitted that the fact that the succeeding Investigating Officer found sufficient material to file charge-sheet is indicative of the fact that the investigation carried out by the petitioner was not proper and was done in a lackadaisical manner. It is submitted that the impugned order does not call for any interference.

11. We have given our anxious consideration to the rival circumstances and the submissions made.

12. It is well settled that the conduction of a fair and speedy investigation is a part of fundamental right, i.e. right to life guaranteed under Article 21 of the Constitution of India as has been held by the Hon'ble Supreme Court in the case **Mithilesh Kumar Singh Vs. State of Rajasthan and others, (2015) 9 SCC 795**. The conduction of a fair and proper investigation would be a part of fundamental right, both of the accused as well as the complainant. The human right as defined under Section 2 (d) of the Protection of Human Rights Act, 1993 means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India. It can thus clearly be seen that the conduction of proper, fair and speedy investigation would be a part of human rights. The learned counsel for the petitioner also did not dispute during the

course of arguments at bar that in a given case where the investigation is shown to be not fairly conducted would amount to breach of human rights.

13. Coming to the facts of the present case, it is a matter of record that the initial investigation in the offence registered on the basis of the complaint lodged by the second respondent was carried out by the petitioner in which he filed 'A Final Summary'. The learned Magistrate on application of mind refused to accept the 'A Final Summary' and directed further investigation to be conducted. It is further a matter of record that succeeding Investigating Officer found enough material to file a charge-sheet against Rupesh Mhamal and others. The question, in such circumstances, is whether the Commission was justified in directing the Director General of Police to initiate proper action against the petitioner for carrying out the investigation in a casual manner?

14. On a careful consideration of the circumstances and the submissions made, we are of the view that although there is nothing wrong in the Commission taking the cognizance of the matter it would be appropriate to leave the matter of taking action against the petitioner to the competent Disciplinary Authority of the petitioner. This is because the Disciplinary Authority will have a benefit of going through the 'A Final

Summary Report', the orders passed thereon as well as subsequent charge-sheet filed and then to decide whether a case for taking departmental action against the petitioner is made out or not. In our considered view, this aspect ought to be left to the Disciplinary Authority for consideration and appropriate action.

15. We are, however, unable to accept the contention that it was not competent for the Commission to have taken cognizance of the complaint. This is for the reason that as indicated earlier conduction of a fair and speedy investigation would be a part of the human rights of the complainant. The contention about non-furnishing of the report of internal investigation also does not commend to us, for the reason that the impugned order passed by the Commission does not show that the Commission either considered the said report or has relied upon the same, while taking cognizance of the complaint or issuing the impugned direction. In our view, it is only when a particular piece of evidence or material, is used against the person proceeded against that it would be necessary for the Authority to put it to the person concerned and seek his explanation. In view of the fact that such report has neither been considered nor relied upon by the Commission, we do not find that the said ground holds any water.

16. Considering overall circumstances, we find it

appropriate to modify the impugned order. We direct that it is for the Director of General of Police, Panaji, to decide whether departmental action needs to be taken against the petitioner having regard to the 'A Final Summary Report' filed, the order passed by the learned Magistrate and the charge-sheet subsequently filed by P.S.I. Vishal Mandrekar and any other relevant material. The Director General of Police shall consider the question independently of the observations and findings in the impugned order.

17. Rule is made absolute in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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