

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 195 OF 2017

DATTARAM T. NAYAK.,

... Petitioner

Versus

THE STATE OF GOA, THR. THE P.I.
PONDA POLICE STATION, PONDA.,

... Respondent

Mr. Nigel Da Costa Frias, Advocate for the petitioner.

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

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

Date:- 30th November 2017

P.C.

Heard Shri Nigel D'Costa Frias, the learned Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 19/05/2017, passed by the learned Judicial Magistrate, First Class at Ponda, in Criminal Miscellaneous Application No.104/2016/B. By the impugned order, the application filed by the petitioner under Section 156(3) of the Code of Criminal Procedure (the Code, for short) for a direction to register FIR against one Shri Pradeep Talaulikar for the offence under Section

193 of Indian Penal Code (IPC, for short), has been dismissed.

3. In short, according to the petitioner, the Management Committee of Shri Ramnath Devasthan has constructed a Purush Sankul Building illegally in Survey No.42/1 of village Bandora, Ponda, Goa. According to the petitioner, the said construction is without submitting the ownership documents. The construction has since been completed and has been occupied without obtaining Occupancy Certificate and NOC from the Health Department. The gravamen of the complaint of the petitioner is that the said Pradeep Talaulikar has made a false statement on affidavit submitted to Village Panchayat, Bandora and Town and Country Planning Department, Ponda, Goa, stating that the construction of the Purush Sankul admeasuring 607 square metres shall be done after demolishing the existing structure admeasuring 509 square metres. According to the petitioner, Pradeep Talaulikar has sworn affidavit, stating that there will be a construction to the extent of 98 square metres of additional area. This affidavit dated 24/12/2012, according to the petitioner, is false to the knowledge of Mr. Pradeep Talaulikar.

4. The petitioner had filed a complaint with Police Inspector, Police Station, Ponda on 18/03/2016, followed by another complaint dated 12/05/2016, addressed to the Superintendent of Police, South Goa. However, no action has been taken. This led

the petitioner to approach the learned Magistrate under Section 156(3) of the Code, for a direction to register offence under Section 193 of the Code.

5. The learned Magistrate has found that the dispute is predominantly of a civil nature. The copy of the affidavit dated 24/12/2012 has not been produced. That the complaint does not disclose cognizable offence and lastly, that there would be a bar under Section 195 of the Code, in as much as the alleged false affidavit was filed before a Public Officer. In that view of the matter, the application has been rejected.

6. It is submitted by Shri Costa Frias, the learned Counsel for the petitioner that although the offence was non-cognizable, the learned Magistrate should have exercised power under Section 155(2) of the Code. Secondly, it is contended that the bar under Section 195 would not be attracted as the affidavit is not submitted before a Court, but to a Public Officer. It is submitted that the dispute cannot be said to be predominantly of a civil nature.

7. The learned Public Prosecutor has supported the impugned order.

8. We have carefully considered the circumstances and the

submissions made and we do not find that any case for interference is made out. A careful perusal of the complaint filed by the petitioner shows that all that is alleged against Mr. Talaulikar, is that he filed an affidavit dated 24/12/2012 before the Village Panchayat, Bandora and Town and Country Planning Department, Margao stating that the construction of Purush Sankul shall be effected after demolition of existing structure of 509 square metres. It is contended that there does not exist any structure admeasuring 509 square metres. Secondly, it is contended that the construction is completed and has been occupied without obtaining a valid Occupancy Certificate. In our considered view, the dispute is essentially and predominantly of a civil nature, as has been rightly held by the learned Magistrate. The petitioner has already approached the Village Panchayat as well as Town and Country Planning Department and it is pointed out that a show cause notice is issued to the Devasthan. Considering the overall circumstances and the fact that the complaint discloses a dispute, which is predominantly of a civil nature, we do not find that any case for interference is made out. The petition is without any merit and is, accordingly, dismissed.

PRITHVIRAJ K. CHAVAN, J.

C. V. BHADANG, J.

SMA