

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.173 OF 2017**

Cajetan Cardoz,
General Manager of
M/s. Swastik Cruise
Near Betim Jetty Ramp,
Betim-Bardez, Goa,
and permanent resident
of 50/1-B Firguem Bhat
Goa Velha Tiswadi Goa.

.. Petitioner

V/s.

1. Police Inspector,
Porvorim Police Station,
Porvorim, Goa

2. The Captain,
Captain of Ports,
Panaji, Goa.

3. State
Through PP
High Court of Bombay at Panaji,
Goa.

.. Respondents

Mr. Arun De Sa and Mr. S. Shet, Advocates for the Petitioner.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the
respondent nos. 1 and 3.

CORAM: C. V. BHADANG &

PRITHVIRAJ K. CHAVAN, JJ.

DATE : 10th November, 2017.

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

Rule, made returnable forthwith. Shri Amonkar, the learned Additional Public Prosecutor waives service on behalf of respondent nos.1 and 3. Heard finally by consent of parties.

2. By this petition under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure (the Code, for short), the petitioner is seeking quashing of FIR No.163/2016, registered with Police Station, Porvorim for the offences punishable under Sections 353 and 506(ii) of the Indian Penal Code (IPC, for short).

3. The brief facts are that Mr. Captain James Braganza, Captain of Ports/ Head of the Department, River Navigation had lodged a complaint on 15/11/2016 to the Superintendent of Police, Porvorim, Goa, alleging that on 08/11/2016, when one Mr. Vinod Kubal, Department Inspector was deputed to Betim Jetty for controlling traffic flow, the petitioner made an attempt to park one of his vehicles at the Betim Ferry Ramp, for which the Department Inspector Mr. Kubal objected. This happened at about 5.45 p.m. In the complaint, it is alleged that the petitioner started arguing with Mr. Vinod Kubal and threatened him of dire consequences. Except

this, there are no allegations of any overt act attributable to the petitioner. On the basis of the said complaint, the aforesaid offence under Section 353 read with Section 506(ii) of IPC, has been registered and the investigation is stated to be in progress.

4. We have heard Shri De Sa, the learned Counsel for the petitioner and Shri Amonkar, the learned Additional Public Prosecutor for the State and also perused record.

5. Shri De Sa, the learned Counsel for the petitioner submitted that there was dispute regarding shifting of the river cruise belonging to the petitioner, which was subject matter of challenge in W.P. No.754/2016. It is submitted that this Court, by an order dated 24/08/2016, had continued the ad interim relief already operating in the said petition. It is, thus, submitted that there was ad interim relief operating so far as shifting of the river cruise is concerned. It is submitted that the petitioner only showed the copy of the order of this Court to the Department Inspector and neither there was any assault nor criminal force was used against the Department Inspector, Mr. Kubal. It is submitted that even on the face of it, no offence punishable under Section 353 of IPC is made out. It is submitted that the Investigating

Officer (IO) has been unable to collect any evidence to show that the petitioner has indulged into any offence as alleged.

6. Shri Amonkar, the learned Additional Public Prosecutor, after taking instructions from the IO, states that except the complaint, the Investigating Agency has been unable to collect any evidence in respect of the allegations till date. He, therefore, submits that this Court may pass appropriate orders.

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

8. Section 351 of IPC, which defines assault, reads as under :

“351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.”

9. Explanation appended to Section 351 of IPC would clearly show that use of mere words do not amount to assault although gestures accompanied by certain words can do so. In the present case, perusal of the complaint shows that the petitioner had taken one of the tourist vehicles on the Betim Ferry Ramp, which was objected to by Mr. Kubal and there were some arguments, which ensued between the petitioner and Mr. Kubal. Except this, there are no allegations of any overt act made against the petitioner nor of any gestures, which may amount to assault. Even, in so far as the alleged threat given to Mr. Kubal is concerned, as submitted on behalf of the respondent State, the Investigating Officer has been unable to collect any evidence in that regard.

10. The law relating to the quashing of FIR or chargesheet is now well settled. The Hon'ble Supreme Court in a recent decision in the case of ***Parbatbhai Aahir Vs. State of Gujarat and Anr; 2017(12) SCALE 187***, after taking a survey of the relevant decisions holding the field, has culled out the following principles :

"15 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

11. On careful consideration of the principles as laid down in the context of the facts obtaining in this case, we are clearly of the view that continuation of the investigation is not necessary as it would be an abuse of process of law. In such circumstances, in our opinion, this is a fit case in which this Court should exercise jurisdiction under Section 482 of the Code, to quash the FIR.

12. In the result, the petition is allowed in terms of prayer clause (A). Rule is made absolute in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J. **C. V. BHADANG, J.**
SMA