

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO.141 OF 2016.

Smt. Priya Karekar, wife of Brijesh Karekar, aged 38 years, married, housewife, Indian National, resident of H. No.F-1, D/Block, 2nd Floor, Adwalpalkars Shelter, Kerant, Caranzalem, Tiswadi Goa. Petitioner.

Versus

1. Police Inspector, Panaji Town Police Station, Panaji, Goa.
2. Smt. Sunita Shirodkar, wife of Damodar Shirodkar, aged 38 years, married, Indian national, resident of C-179, Singbal, Morod, Kerent, Caranzalem, Tiswadi-Goa. Respondents.

Shri Shivan Desai, Advocate for the petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the respondent no.1.

Shri Nigel Costa Frias, Advocate for the respondent no.2.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Reserved on:-23rd January,2017.
Pronounced on :-20th February, 2017.

JUDGMENT (Per Nutan D. Sardessai, J)

Heard Shri Shivan Desai, learned Advocate for the

petitioner, Shri P. Faldessai, learned Additional Public Prosecutor for the respondent no.1 and Shri Nigel Costa Frias, learned Advocate for the respondent no.2.

2. Rule.

3. Heard forthwith with the consent of the learned Counsels appearing for the parties.

4. The learned Addl. Public Prosecutor and learned Advocate waive notice on behalf of the respective respondents.

5. The above petition inter alia prays for the quashing and setting aside the FIR No.84/2015 registered by the respondent no.1 against the petitioner in the Sessions Case No.13/2016 pending before the Children's Court for the State of Goa constituted under the Goa Children's Act, 2003 and the Rules framed thereunder.

6. Briefly it was the case of the petitioner that on 23.3.2015 she had filed a complaint alleging that some

unknown persons had damaged the window glass of her bedroom on 23.3.2015 between 16.30 hours to 18.00 hours by throwing stones from outside and thereby caused loss to the tune of ₹2000/- (Rupees two thousand only) giving rise to the registration of a non-cognizable complaint by the respondent no.1 against unknown persons. The respondent no.2 had filed a complaint before the respondent no.1 against the petitioner alleging that the petitioner had called her son Ashish at her residence through her watchman and abused him with filthy language and threatened him with dire consequences apart from compelling him to pay ₹2000/- (Rupees two thousand only) towards the window glass and recovered the same from her son.

7. It was further her case that the complaint filed by the respondent no.2 was blatantly false and malafide and registered mainly to blunt the complaint filed by the petitioner and dilute any action that may be taken against the respondent no.2 in pursuance to the complaint filed by the petitioner. The respondent no.2 had cooked up a false story under an attempt to neutralise her complaint. The respondent no.1 had registered the complaint of the respondent no.2

without any preliminary inquiry who were duty bound to conduct a preliminary inquiry before the registration of the FIR. In the absence thereof, it amounted to an arbitrary exercise of power and vitiated the registration of the FIR. In any event the allegations in the complaint did not make out any offence and more particularly under Section 8 of the Goa Children's Act and therefore the registration of the FIR was an illegal exercise of powers. The respondent no.1 had completely misconstrued the nature and the import of Section 8 of the Goa Children's Act while registering the offence against the petitioner. The allegations against the petitioner were bald and unsubstantiated without any material being produced by the respondent no.2 to establish her involvement. The respondent no.2 had abused the process of law and malafide filed a complaint against the petitioner with the sole intention to harass her by using the police machinery, hence the petition.

8. Shri Shivan Desai, learned Advocate for the petitioner submitted that the registration of the offence against the petitioner particularly under Section 8 of the Goa Children's Act 2003 ("the Act" for short hereinafter) was

untenable and baseless and as such the offence under Section 8 of the Act was not at all attracted to the case at hand. The investigation records clearly revealed that the complaint was motivated at the instance of the respondent no.2 to falsely implicate the petitioner and that there was no warrant for the police to file a chargesheet against her before the Children's Court by invoking the provisions of Section 8 of the Act. No case whatsoever was made out thereunder and as such the chargesheet against her had to be quashed and set aside.

9. Shri P. Faldessai, learned Addl. Public Prosecutor on behalf of the respondent no.1 pointed out that the statement of the victim and the watchman amply supported the case of the respondent no.2 and there was no reason to support the contention of Shri Shivan Desai, learned Advocate for the petitioner that the offence particularly under Section 8 of the said Act was not attracted to the case at hand. Shri Nigel Costa Frias, learned Advocate for the respondent no. 2 too submitted that the offence under Section 8 of the Act was attracted to the case at hand on a bare reading of the statement of the victim and the watchman coupled with the complaint of the respondent no.2 and therefore no case

whatsoever was made out to quash the FIR particularly under Section 8 of the said Act against the petitioner.

10. Shri Shivan Desai, learned Advocate for the petitioner relied in Dr. **Dilip Amonkar Vs. State of Goa and another, (Criminal Writ Petition No. 42/2016)** and **P. Ravi Vs. Police Inspector, Pernem Police Station and ors, (Criminal Writ Petition No. 107/2015)** to substantiate his case.

11. We have heard the learned Counsels and perused the relevant provisions of the Act apart from the contents of the chargesheet.

12. Section 2(m) of the Act defines Child abuse thus:-

“Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:—

- (i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured

child resulting in serious impairment of his growth and development or in his permanent incapacity or death;

Section 8 of the Act deals with child abuse and provides that all children should be assured of a safe environment meaning thereby an environment in which he/she will not be abused in any way and his/her development will be nurtured. Sub-Section 2 thereof provides the punishment in respect of the offence of child abuse. Therefore in the context of the definition of child abuse contained in Section 2(m) of the Act, the statement of the victim and the watchman in particular would have to be read and understood and to conclude whether the case alleged against the petitioner would amount to child abuse within the meaning of Section 2(m) and constitute an offence punishable under Section 8(2) of the Act.

13. In **Dilip Amonkar** (supra), due reference was made to the aspect of child abuse defined under Section 2(m) and the offence of child abuse and trafficking contained in Section 8 of the Act and on a consideration of the material at large containing allegations against the petitioner therein, was it held that the chargesheet did not show the acts complained of were commissions or omissions attributed to the petitioner

were allowed by the petitioner because the victim was a child. It was further observed as "therefore, there is nothing to show that the Petitioner neglected in discharging his duties of care because the victim happened to be a child. Merely because the victim is a child by itself, it cannot be said that cognizance of the offence has to be taken only by the Children's Court". In the ultimate, the petition was partly allowed and the chargesheet to the extent of invoking the provisions of Section 8(2) read with Section 2(m) of the Act stood quashed and set aside. This Court had considered the judgment in **P. Ravi** (supra), wherein one of us (F.M. Reis, J) is a party, had observed at para 11 thus:-

"A bare reading of the aforesaid section in the context of the object of the Act of 2003, which is to protect, promote and preserve the best interests of children in Goa and to create a society that is proud to be child friendly, if read in juxtaposition to the allegations in the complaint, no offence under Section 8 of the Act of 2003 could be said to have been made out."

14. A perusal of the statement of the victim himself

would indicate that on the evening of 20.3.2015 while he was playing with his friends and throwing stones on the tamarind tree, one stone had fallen on the window of the occupant of Adwalpalkar Apartment causing a glass pane to break. On the next morning, the security guard named Santosh Giri came to his house asking his name and reported to him that he has been called by the petitioner herein since the window pane of her flat was broken. He had gone to the flat and met a man who asked him the details and told him that he had broken the window glass and thereafter despite his apology, had started shouting at him and told him that he had to pay for the expenses apart from taking his mother's mobile number. On his version he was scared but had not disclosed this fact to his mother.

15. His statement further reveals that on 22.3.2015 he was again called during the afternoon time to the house of the petitioner and when she had started shouting at him for breaking the window pane which was followed by threats to pay ₹2000/- (Rupees two thousand only) to her failing which she would take him and his mother to the police station. He was scared, had gone home and collected ₹2,000/-(Rupees

two thousand only) from his pocket money and handed it over to her. During such time too, his mother was not at home but nonetheless she was informed by the petitioner that he had given money to her and only then had he revealed the incident to her. On the face of it, this statement was recorded on **23.3.2015**, three days after the alleged incident on the evening of **20.3.2015**.

16. The statement of the security guard indicates that the petitioner had informed him about the breaking of her window pane and instructed him to make inquiry and find out who was responsible for it. He had contacted the son of the complainant and taken him to the house of the petitioner who told the complainant's son that he had broken the window of her flat, that he would have to pay for it and in the meantime to call his parents. Although he was present at the relevant time, there was no word or whisper at his instance further to indicate that either the man from the house of the petitioner or the petitioner herself had shouted at the minor boy. There was also no reference by him to any dual visit by the minor to the flat of the petitioner much less corroborating his version on the alleged act of being shouted at him by the man from

her house or by the petitioner herself in person. There was also no corroboration by him on any abuses or threats being issued to the minor.

17. The complaint at the instance of the complainant was only on **23.3.2015** in which she alleged that her son was harassed and tortured by the petitioner. She had also alleged in her complaint that the petitioner has started abusing her son when he had accompanied the security guard to the petitioner's flat and threatened him that incase he did not give ₹2,000/- (Rupees two thousand only), she would initiate a complaint and get him arrested. Her version was primarily proceeding on the basis of the disclosure purportedly made to her by her minor son but which was not at all his version in his statement recorded by the police.

18.. On a perusal of the allegations therefore even if taken at their face value, it cannot at all be heard on behalf of the respondent no.2 that her son was subjected to any psychological and/or physical abuse or that any acts were done or words used by the petitioner which had affected him as to debase, degrade or demean the intrinsic worth or

dignity of a child as a human being as contemplated in Section 2(m)(ii) of the Act. The complaint contains stray references to threats and abuses without specifying the nature and the type of any abuses used or the threats given to the minor so as to attract the offence of child abuse in terms of Sections 2(m) (i) and (ii) of the Act. Therefore, there is no material on record to substantiate the charges against the petitioner under any of the provisions of Sections 504 or 506 IPC and Section 8 of the Act in particular.

19. In the circumstances, therefore, we allow the petition and quash and set aside the FIR No.84/2015 registered by the respondent no.1 against the petitioner.

20. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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