

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 33 OF 2017

1. Mrs. Vina Patkar,
wife of Mr. Dajvip Patkar,
Indian National, major in age,
unemployed, residing at
c/o Vibha Nayak,
"Sita Nivas", near Safy Masjid,
Baina, Vasco da Gama, Goa. (deleted)
2. Mrs. Vibha Nayak,
wife of Mr. Gajanan Nayak,
Indian National, major in age,
housewife, residing at and her
husband,
3. Mr. Gajanan Nayak,
son of late Mr. Vishnu Naik,
Indian National,
major in age, businessman,
residing at "Sita Nivas", near Safy
Masjid, Baina, Vasco da Gama, Goa. **Petitioners**

Versus

1. State of Goa,
Represented by the Officer-in-charge
of Mapusa Police Station.
2. The Public Prosecutor,
High Court Building,
Althino, Panaji, Goa.
3. Mr. Dajvip Patkar,
son of Mr. Vilas Patkar,
Indian National, major in age,
Advocate, resident of B-19,
Chamundavan, Housing Board Colony,
Mapusa, Goa. **Respondents**

Ms. Maria Caroline Collasso, Advocate for the Petitioners.

Shri Pravin N. Faldessai, Additional Public Prosecutor for Respondent Nos. 1 and 2.

Ms. Ketki Pednekar, Advocate for Respondent No. 3.

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

DATE:- 17th NOVEMBER, 2017.

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

1. Leave to delete petitioner no.1 is granted. Necessary deletion be carried out forthwith.

2. By this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (Code, for short), the petitioners are seeking quashing of F.I.R.No.97/2015 and the consequent charge-sheet in Special Case No.71/2017 before the learned Children's Court at Panaji, Goa.

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

That, petitioner no.1 (since deleted) is the wife of the third respondent. For the sake of convenience, we propose to refer to her as the petitioner no.1, notwithstanding her deletion. Pramath is the

son of petitioner no.1 and the third respondent. There are disputes and differences between petitioner no.1 and the third respondent. It appears that petitioner no.1 had filed several police complaints against the third respondent and others and with the intervention of a non-government organization (NGO), the disputes were settled and a Memorandum of Understanding (MOU) was drawn on 15th September, 2014. It further appears that pursuant to the amicable settlement between the parties, petitioner no.1 and the third respondent started staying together. However, according to petitioner no.1, the third respondent left the house along with the child on 31.10.2014. Indisputedly, both petitioners and the third respondent have filed separate proceedings for dissolution of marriage, which are pending. Petitioner no.1 has also filed a case under Protection of Women from Domestic Violence Act, 2005 (Act, for short) against the third respondent, which is also pending.

4. The incident which is the subject matter of the impugned F.I.R. happened on 27th March, 2015. According to the third respondent, who is the complainant, he went to St. Anthony K.G. and Primary School at Khorlim, Mapusa to drop Pramath to school (as Pramath was to attend his academic examination), the complainant had taken Pramath alone on his scooter. At about 8.55 hours, when he reached near St. Anthony School, Khorlim, Mapusa, according to him, he saw

`an unusual gathering of about ten persons including women'. When the complainant stopped the scooter to drop Pramath just near the school gate, and got down from scooter, some persons from the gathering surrounded them. It is the material allegations that petitioner no.1 who was one amongst the gathering started pulling Pramath from the arms of the third respondent when he was trying to resist. According to the third respondent, petitioner no.1 managed to obtain the custody of Pramath and took him away along with Reshma Nayak and Deoraj Dodaman (accused nos.3 and 4) who was a driver in a Wagon R Car bearing No.GA-03-8439 accused nos. 3 and 4. The third respondent chased the said car on his Scooter and managed to intercept the car near Lanjekar Building, Khorlim, Mapusa, with the help of some traffic personnel and petitioner no.1 along Reshma Nayak, Deoraj Dodaman and minor Pramath, were brought to the Police Station, Mapusa. Subsequently, on the basis of a complaint lodged by the third respondent, an offence at Crime No.97/2015 was registered against petitioner no.1 along with Reshma Nayak, Deoraj Dodaman and petitioners no.2 and 3 for the offences punishable under Sections 143, 147, 341, 506, 363, 323 and 342 read with Section 149 of the Indian Penal Code and Section 8 (2) of the Goa Children's Act.

5. After investigation, a chargesheet is filed against the petitioners along with Reshma Nayak and Deoraj Dodaman

before the learned Children's Court, Panaji, bearing Special Criminal Case No.71/2017.

6. We have heard the learned counsel for the petitioner and learned Additional Public Prosecutor for respondent nos.1 and 2. We have also heard Ms.Pednekar, the learned counsel for the third respondent and we have gone through the record.

7. It is submitted by Ms. Collasso, learned counsel for the petitioners that there is no evidence against petitioner nos.2 and 3 to show their complicity or involvement in the offence as alleged. It is submitted that even if the contents of the F.I.R.are taken as true, at their face value, no offence as alleged can be said to have been committed by petitioner nos.2 and 3. The learned counsel was at pains to point out that the only allegation against the petitioner nos.2 and 3, who are respectively the sister and the brother-in-law of petitioner no.1 is that they had attended the Police Station, Mapusa. It is submitted that neither respondent no.3 nor any other witness speaks about the presence of petitioner nos.2 and 3 at the time of incident, which had allegedly happened near the gate of the school. It is, thus, submitted that the impugned F.I.R. and the consequent prosecution against petitioner nos.2 and 3 is an abuse of process of the Court and this Court may exercise powers under Section 482 of the Code to quash the same.

8. The learned Additional Public Prosecutor submits that the F.I.R. and the material collected during the course of the investigation would show that there was a common object between the petitioners and the other co-accused to kidnap minor Pramath and this aspect is fortified by the presence of petitioner nos.2 and 3 shortly after the minor was brought to the Police Station, Mapusa. The learned Additional Public Prosecutor, however, does not dispute that neither the complaint nor any other witnesses speak about the presence of petitioner nos.2 and 3 at the incident which happened near the gate of the school.

9. The learned counsel for the third respondent also supports the submissions made on behalf of the State. It is submitted that there are long standing disputes between petitioner no.1 and the third respondent and there was a clear attempt to obtain forcible custody of minor Pramath from respondent no.3 with the aid of the co-accused, which includes petitioner nos.2 and 3. The learned counsel has pointed out that minor Pramath was in the custody of the third respondent much prior to 31st October, 2014 and the third respondent being the natural guardian of minor Pramath there was a clear attempt to kidnap minor Pramath from the lawful guardianship of respondent no.3.

10. We have given our anxious consideration to the rival

circumstances and the submissions made.

11. As noticed earlier, petitioner no.1 is deleted from the array of the petitioners. Apart from petitioner no.1, there are four co-accused before the learned Children's Court including petitioner nos.2 and 3. In view of the fact that learned counsel has not pressed the petition on behalf of petitioner no.1, the only question is whether there is any material to show the involvement or the complicity of petitioner nos.2 and 3 in the alleged offence. A bare perusal of the F.I.R. would show that it is not even the case of the third respondent that petitioner nos.2 and 3 were present when the alleged incident took place near the gate of the school at about 8.55 hours. It is only when respondent no.3 managed to chase and intercept the vehicle in which minor Pramath was being taken away and after all of them were brought to the Police Station, Mapusa that petitioner no.2 and 3 had gone to the Police Station, Mapusa. Except this, there are no allegations of any overt act made against petitioner nos.2 and 3. It may not be unusual for petitioner nos. 2 and 3, who are closely related to petitioner no.1 to remain present at the Police Station, only to assist petitioner no.1. However, that itself, may not be sufficient to draw an inference that petitioner nos.2 and 3 were the parties to a common object of kidnapping minor Pramath from the guardianship of respondent no.3.

12. As noticed earlier, the learned Additional Public Prosecutor did not dispute that there are no witnesses, who speak about the presence of petitioner no.2 and 3 in the incident near the gate of the school, which had allegedly happened at 8.55 hours. If that be so, in our considered view, the F.I.R. as against petitioner nos.2 and 3 cannot be sustained. In our view, even if, the allegations made in the F.I.R. and the material collected during the course of investigation are taken at their face value, the only allegation against petitioner nos.2 and 3 is about these petitioners having attended the Police Station and nothing else. In that view of the matter, in our considered view, the impugned F.I.R. and the consequent continuation of the prosecution as against the petitioner nos.2 and 3 would be an abuse of process of the Court.

13. A useful reference, at this stage, is made to the decision of the Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335**, in which the following principles have been culled out, which are relevant while exercising the jurisdiction under Section 482 of Cr.P.C. for quashing the prosecution read thus:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence

or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156 \(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155 \(2\)](#) of the Code;

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the

concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(Emphasis supplied)

14. Considering the overall circumstances, in our view, this is a fit case where the prosecution as against petitioner nos. 2 and 3 (who are accused nos.2 and 3), deserves to be quashed. We find that as a necessary corollary the offences under Sections 143, 147 and 149 of IPC will also have to be quashed as the said offences can be said to be made out only where there is an unlawful assembly of five or more persons involved in the offence. Thus, once the prosecution, as against petitioner nos.2 and 3 is quashed, the number of the accused would drop below five and, therefore, the offences under Sections 143, 147, and 149 of IPC are also required to be quashed.

15. In the result, we pass the following order:-

Order

- (i) The petition is allowed.
- (ii) The impugned F.I.R. and the consequent chargesheet against petitioner nos.2 and 3 (accused nos.2 and 3) is hereby quashed.
- (iii) The Children's Court shall consider the issue of framing of charge against the remaining accused nos.1,4 and 5 for the offences punishable under Sections 341, 506, 363, 323 and 342 of IPC read with Section 8 (2) of the Goa Children's Act, on its own merits and in accordance with law.
- (iv) Rule is made absolute, in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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