

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 56 OF 2015

- 1 Mr. Dhanu Bogati,
s/o. Mr. Amar Singh Bogati,
major of age, service,
resident of Guirim,
Mapusa, Goa.
- 2 Mr. Gajanan Madar, Major,
s/o. Mr. Parappa Madar,
resident of House No.24,
near Cine Lata, Dando Vaddo,
Margao, Salcete, Goa, ...Petitioners

Versus

- 1 The State of Goa,
Through Police Inspector,
Verna Police Station,
Verna, Salcete, Goa,
- 2 Mr. Thomas Fernandes,
s/o. Mr. Basil Fernandes,
major of age, resident of
House No.396, Majorda,
Sanglea Vaddo, Salcete,
Goa. ...Respondents

Shri Ryan Menezes, Advocate for the Petitioners.

Shri P. Faldessai, Additional Public Prosecutor for the
Respondent - State.

CORAM: C.V. BHADANG,J.

Dated : 29th January,2018

ORAL JUDGMENT:

The challenge in this petition under Section 482 of the
Code of the Criminal Procedure ('Code', for short) is to the

judgment and order dated 5th February 2015 passed by the learned Additional Sessions Judge, South Goa at Margao in Criminal Revision Application No.92 of 2014. By the impugned judgment the learned Session Judge, while dismissing the Criminal Revision Application filed by the petitioners has confirmed the order dated 3rd July 2013 passed by the learned Judicial Magistrate, First Class, Margao, in Criminal Misc. Application No.264/2013/F. By the said order, the learned Magistrate had directed registration of the F.I.R. while acting under Section 156(3) of the Code.

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

That the 1st petitioner is a Police Sub Inspector while the 2nd Petitioner is a Constable working in the Goa Police Force. In February 2013, the petitioners were deployed with the special tourist police unit, which was entrusted with the task of protecting the tourists and implementation of the provision of Goa Registration of Tourist Trade Act, 1982 that governs tourism related activities in the State. On 10th February, 2013, the 2nd petitioner and others reported as usual for duty to Verna Police Station, within the territorial jurisdiction of which Utorda Beach

is situated. It is stated that they were patrolling at the said beach. At about 17.15 hours, the 2nd respondent who is the owner of Viva Goa Shack, came on the site, under influence of alcohol and attempted to destroy the life guard hut. The 2nd petitioner and the other police personnel objected to the same when the 2nd respondent is alleged to have behaved rudely and in an arrogant manner. It is also said that the 2nd respondent physically assaulted the 2nd petitioner and the other Constables in which they sustained injuries. The incident was reported to the Verna Police Station on the basis of which an FIR No.33 of 2013 was registered against the 2nd respondent under Sections 353 and 504 r/w. 34 of I.P.C. and after investigation a chargesheet is filed and the 2nd respondent is facing prosecution in respect of the said offence before the Judicial Magistrate First Class at Margao.

3. On 9th March, 2013, the 2nd respondent filed a complaint with the Verna Police Station and some other authorities alleging that some police personnel including the petitioner No.1 had assaulted him with a stick and kicks and in the incident he had suffered injuries to his intestine. The 2nd respondent also made similar allegations against one Devendra Sawant - Police Constable and the 2nd petitioner. On 6th April 2015, the 2nd

respondent approached the learned Judicial Magistrate First Class, Margao with a complaint under Section 156(3) of the Code, which was registered as Criminal Misc. Application No.264/2013/F. The learned Magistrate by an order dated 3rd July 2013 directed the registration of an F.I.R. and investigation. The petitioners unsuccessfully challenged the said order before the Sessions Court. Hence, this petition.

4. I have heard Shri Ryan Menezes, the learned Counsel for the petitioners and Shri P. Faldessai, the learned Additional Public Prosecutor for the respondent no.1. None appears for the respondent no.2.

5. Shri Menezes, the learned Counsel for the petitioners has placed reliance on the decision of the Supreme Court in the case of **Anil Kumar and others v/s. M.K. Aiyappa and another** (2013)10 SCC 705 in order to submit that the learned Magistrate could not have directed registration of the FIR in the absence of a sanction, as required under Section 197 of the Code. It is submitted that the Division Bench of this Court in the case of **Advocate Aires Rodrigues v/s. Officer Incharge, Anti Corruption Branch, Panaji** in Criminal Writ Petition No.126 of 2014 decided on 22nd December 2014 and in the case of

Pradeep Ramchandra Velip v/s. State of Goa and others, Criminal Misc. Application (Main) No.71 of 2017 decided on 5th January 2018 have held that the previous sanction under Section 197 of Cr.P.C. is necessary before the Magistrate could refer the matter for investigation by the police under Section 156(3) of Cr.P.C., against a public servant. It is submitted that the Courts below have not examined this aspect and thus, the impugned order directing investigation is illegal.

6. The Division Bench of this Court in a recent decision in the case of **Pradeep Velip** (supra), after placing reliance on the decision of the Supreme Court in the case of **Anil Kumar** (supra), has held that the Magistrate cannot refer the complaint for investigation to the police under Section 156(3) of the Code against the public servant, in the absence of a sanction under Section 197 of the Code. In the case of **Pradeep Velip** (supra), the petitioner was working as a police Sub-Inspector at Maina – Curtorim Police Station. It was alleged that on 26th November 2012 while the petitioner was on patrolling duty during night, he noticed two persons standing near a motorcycle who were questioned on suspicion. It was alleged that on being questioned the said persons attempted to flee from the spot, however, their attempt was thwarted. It was the material allegation that during

questioning, one of them became aggressive and started arguing with the petitioner and used criminal force against him. However, the 3rd respondent in that case filed a complaint with the Superintendent of Police demanding action against the petitioner and others which was followed by an application before the Magistrate under Section 156(3) of the Code. The learned Magistrate directed investigation which order was confirmed by the Sessions Judge and the matter came before this Court.

7. It can thus be seen that in a similar situation against a public servant, namely a Police Officer, it was held that the learned Magistrate could not have referred the complaint for investigation to the police in the absence of a sanction under Section 197 of the Code.

8. In my considered view, the decision in the case of **Pradeep Velip** (supra), would apply on all fours in the present case. One of the conditions required for attracting Section 197 of Cr.P.C. is that the alleged act has to arise out of the exercise of the duty of the concerned public servant. In other words the act complained of, should arise out of and should have some proximate nexus with the work and the duty of the concerned public servant. In

the present case, it is apparent that the petitioners were patrolling at the beach and it was during the course of their patrolling that the incident is alleged to have happened wherein the 2nd respondent was allegedly attempting to destroy the life guard hut and when the petitioner No.2 and others intervened, the incident is alleged to have happened. In such circumstances, it is clear that the alleged act has a clear nexus with the duty of the petitioners and in the absence of the sanction under Section 197 of the Code the learned Magistrate could not have referred the complaint for investigation under Section 156(3) of the Code. None of the Courts below have adverted to this aspects or to the judgement of the Supreme Court in the case of **Anil Kumar** (supra). In that view of the matter the impugned order needs to be set aside. In the result, the petition is allowed. The impugned order is hereby set aside. The complaint under Section 156(3) of Cr.P.C. is hereby dismissed. Rule is made absolute in the aforesaid terms.

C.V. BHADANG J.

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