

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 68 OF 2018
WITH
CRIMINAL WRIT PETITION NO.69 OF 2018****CRIMINAL WRIT PETITION NO. 68 OF 2018**

Shri Dominc Mendes,
aged about 45 years,
Unit Representative of Curlies Guest House,
St. Michael Waddo,
Anjuna, Bardez, Goa.

.... Petitioner

V e r s u s

1. The Goa State Pollution Control Board,
represented by its Member Secretary,
Shri Levinson J. Martins,
aged about 50 years, Dempo Towers,
1st floor, Patto Plaza,
Pasnaji-Goa.

2. STATE OF GOA,
through the Public Prosecutor,
High Court of Bombay at Goa.

..... Respondents

CRIMINAL WRIT PETITION NO.69 OF 2018

1. M/s. Curlies Guest House,
represented by its Proprietor
Shri Edwin Nunes,
aged about 45 years,
r/o St. Michael Waddo,
Anjuna, Bardez,Goa.

2. Shri Edwin Nunes,
aged about 45 years,
Proprietor of Curlies Guest House,
r/o H. No.774/2, St. Michael Waddo,
Anjuna, Bardez, Goa. Petitioners.

V e r s u s

1. The Goa State Pollution Control Board,
represented by its Member Secretary,
Shri Levinson J. Martins ,
aged about 50 years, Dempo Towers,
1st floor, Patto Plaza,
Panaji-Goa.
2. STATE OF GOA,
through the Public Prosecutor,
High Court of Bombay at Goa. Respondents

Mr. Shivan Desai, Advocate for the Petitioners.

Mr. P. Dangui, Government Advocate for the Respondents.

Coram:- C. V. BHADANG, J.
Date:- 8th June 2018.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned Government Advocate waives service on behalf of the respondents. Heard finally by consent of parties.

2. Both these petitions arise out of the order dated 13/11/2017 passed by

the learned Judicial Magistrate First Class, Mapusa in Case No.AOA/663/P & CP Act/2017/C. The petitioners in Criminal Writ Petition No.69/2018, are accused nos. 1 and 2, while the petitioner in Criminal Writ Petition no.68/2018, is arrayed as the accused no.3 and is said to be the 'unit representative', of the accused no.1. That is a complaint filed under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act, for short) and Water (Prevention and Control of Pollution) Act, 1974 (Water Act, for short)

3. I have heard Shri Desai, the learned counsel for the petitioners and Shri Dangui, the learned Government Advocate for the respondents. Perused record.

4. On behalf of the petitioners, reliance is placed on the decision of the Supreme Court in the case of **Anil Kumar and others Vs. M.K. Aiyappa and another (2013) 10 SCC 705** and **Rajendra Rajoriya Vs. Jagat Narain Thapak and others, AIR 2018 SC 1229**, in order to submit that at the stage of issuance of process and taking cognizance the Magistrate is expected to apply mind and record reasons although such reasons may not be elaborate. It is submitted that in the present case, the impugned order is totally unreasoned. He also submits that the accused no.3, who is said to be a 'unit

representative', is not at all connected with the accused no.1/Establishment and he is not even an employee. It is submitted that thus, the accused no.3 cannot be vicariously made liable with the aid of Sections 47 of the Water Act and section 40 of the Air Act as the accused no.1 is a proprietorship concern.

5. The learned Government Advocate submits that the petitioners have an alternate remedy of filing revision application before the learned Sessions Judge. It is submitted that the 'unit representative', was present during the inspection conducted by the respondent no.1. It is submitted that the proprietor and the 'unit representative' would both be liable. It is submitted that the unit was being operated without licence or consent of the respondent no.1 under the Water Act and the Air Act. The learned Additional Government Advocate also points out that an order/direction under section 33-A of the Water Act and Section 31-A of the Air Act, was also issued to the accused nos.1 and 2. He, therefore, submits that the learned magistrate was justified in issuing process.

6. I have carefully considered the rival circumstances and the submissions made.

7. At the outset as held by the Hon'ble Supreme Court, in the case of **Vijay and others Vs. State of Maharashtra and Others AIR 2017 SC 397**, the availability of an alternate remedy is not an absolute bar and would not limit the availability of the inherent powers under section 482 of Cr.P.C. The question whether such a petition could be entertained, essentially would depend upon facts and circumstances of each case. Here is a case where the impugned order lacks any reasons. It is now well settled that although the learned Magistrate is not required to record elaborate reasons at the stage of taking cognizance/issuance of process, the impugned order must demonstrate application of mind to the contents of the complaint. Reliance in this regard can be placed on the Division Bench judgment of this court, in the case of **Nirmal Bang Securities Private Limited and others Vs. State of Maharashtra and others, 2017 ALLMR (Cri) 4551**. It is not necessary to multiply authorities on the point.

8. Considering the overall circumstances, in my considered view it would be appropriate that the Magistrate re-considers the question of issuance of process after affording an opportunity of hearing to the complainant. In that view of the matter, the following order is passed:

ORDER:

(i) The Criminal writ petitions are partly allowed.

- (ii) The impugned order is hereby set aside.
- (iii) The matter is remitted back to the learned Magistrate, for deciding the question of issuing of process, afresh after hearing the learned counsel for the complainant.
- (iv) The parties to appear before the learned Magistrate on 25/6/2018 at 10.a.m.
- (v) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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