

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.170 OF 2018

Ruben Franco,
son of Vincent Franco,
aged 55 years, Indian
National, resident of
House No.143, Umtawado,
Calangute, Bardez-Goa.

... Petitioner

V e r s u s

1. STATE
Through Calangute Police Station,
Section, Calangute Goa.

2. Public Prosecutor,
Panaji-Goa.

... Respondents

Ms. Ankita Nagvekar, Advocate for the Petitioner.

Shri S. R. Rivankar, Public Prosecutor for the State-
Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Judgment on : 17 December 2018
Judgment Pronounced on : 20 December 2018

JUDGMENT

1. Rule. Heard forthwith with the consent of the learned Advocates. Learned Public Prosecutor appearing for the respondents waives service.

2. This petition takes exception to the order dated 04.03.2016 passed by the learned JMFC at Mapusa and that passed by the learned Additional Sessions Judge at Mapusa dated 27.02.2018 by invoking the jurisdiction of this Court under Article 227 of the Constitution of India and Section 482 of the Criminal Procedure Code.

3. Heard Ms. A. Nagvenkar, learned Counsel appearing on behalf of the petitioner who invited attention to the complaint and submitted that the same was lodged against the petitioner out of personal vengeance. The petitioner had sought for a discharge from the proceedings before the learned JMFC who rejected the said plea and ordered charges to be framed against him under Sections 324 and 427 of the Indian Penal Code. The petitioner took the matter in revision before the learned Sessions Court and the learned Additional Sessions Judge by the order dated 27.02.2018 refused to interfere with the order passed by the learned Magistrate and dismissed the revision application thereby confirming the charges against the petitioner under Sections 324 and 427 of the Indian Penal Code.

4. It was her contention that mere suspicion was not adequate to frame charge against the accused and that there

had to be material on record to formulate charge against the accused. In that context she placed reliance in **Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra [(2008) 10 SCC 394]**, **L. Krishna Reddy vs. State by Station House Officer & Ors. [(2014) 14 SCC 401]**, **Rudolf Fernandes vs. State of Goa [1993 SCC Online Bom 217]**, **Shaikh Ahmed Hussain & anr. vs. State of Maharashtra [1990 SCC Online Bom 315]** and besides relied on the guidelines relating to search substantiating her case that no case whatsoever was made out for framing charge against the petitioner under Sections 324 and 427 of the Indian Penal Code and it was a fit case to interfere and quash the proceedings against the petitioner.

5. Shri S. R. Rivankar, learned Public Prosecutor appearing on behalf of the State-respondents submitted that the complaint prima facie disclosed the commission of the offences by the petitioner and besides there was due corroboration at this stage from the statement of the two eye witnesses. Besides, the medical certificate also substantiated the case of the petitioner and therefore there was more than prima facie material to frame charge against the accused while pressing for the dismissal of the petition.

6. i have taken note of their contentions, the judgments relied upon on behalf of the petitioner, the requirements of framing of charge and the orders under challenge and proceed to decide the petition appropriately.

7. A cursory perusal of the complaint lodged by the complainant reveals that while he was in his restaurant on 14.11.2014 alongwith his family, the petitioner came near the restaurant, threw down his Yamaha Motorcycle of the stated registration number on the road which was parked outside the restaurant and thereafter the petitioner pelted stones on him as a result of which he had sustained injuries on his left hand finger. The petitioner had thereafter come inside his bar and restaurant and threw down the whisky bottles, beer bottles and soft drink bottles on the ground and also threw away glasses of alcohol of two customers who were sitting in the restaurant due to which they both ran away. He had lodged his complaint at the Police Station whereupon he was immediately referred to the PHC Candolim for medical examination and the wound on his hand was sutured apart from advising him to get an X-ray done at the District Hospital, Mapusa. He quoted the earlier instances when complaints were lodged against the said petitioner though the same were

treated as NC complaints and pressed for necessary action against the petitioner.

8. The statements of the eye witnesses reveal that while they were present in the bar and restaurant of the complainant, the petitioner had come there and had thrown the motorcycle of the bar owner on the ground which was parked on the road outside the restaurant. Furthermore, he had pelted stones on the owner of the restaurant and then started breaking glasses and beer bottles which had caused panic in him and thereafter he had run away from the bar and went to his house. Similar was the statement of the second eye witness who was present in the bar on the stated date and time who narrated the incident which had taken place in the bar of the complainant and acts committed by the petitioner. The medical certificate referred to by Shri S. R. Rivankar, learned Public Prosecutor indicates in clear terms that the complainant was examined on the very night of the incident upon being brought with an alleged history of assault with stones and thereupon he was found with a lacerated wound on the left hand finger apart from the possibility of a fracture of the proximal phalynx and an abrasion and opinion reserved in that regard upon being referred to the Asilo Hospital for orthopaedic opinion. In other words, the complaint duly

corroborated by the statement of the two eye witnesses and the independent medical record more than prima facie establish that the incident as alleged took place and that the petitioner had committed the offences of mischief and causing grievous hurt to the complainant on the night of 14.11.2014 precipitating the complaint and the action against the petitioner by the Police by filing a chargesheet against him.

9. The learned JMFC considered the case of the prosecution as set out against the petitioner-accused, the contentions of the learned Assistant Public Prosecutor and the learned defence Advocate and thereupon on an appraisal of the material at large before it, had recorded her findings and had proceeded to frame charge against the petitioner-accused under sections 324 and 427 of the IPC. The petitioner had taken the matter in revision challenging the order of the learned JMFC before the Additional Sessions Judge who on a consideration of the same material including the judgment on the point had come to a clear finding that there was material to frame charge against the accused, that no error was committed by the learned Magistrate and in that view of the matter, had dismissed the revision petition.

10. In **Yogesh** (supra), the Hon'ble Apex Court considered the scope and ambit of the powers of the Trial Court under Section 227 of the Criminal Procedure Code in the matter of discharge and held that if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he would be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not.

11. In **L. Krishna Reddy** (supra), the two Bench Judge of the Hon'ble Apex Court spelt out the duty of the Court when the case is presented to it by the prosecution in the matter of framing the charges and held that the Court is neither a substitute nor an adjunct of prosecution. On the contrary, once a case is presented to it by the prosecution, its bounden duty is to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. The interest of a person arraigned as an accused must also be kept in perspective lest, on the basis of flippant or vague or vindictive accusations, bereft of probative evidence, the ordeals of a trial have to be needlessly suffered and endured.

12. In **Rudolf Fernandes** (supra), a learned Single Judge of this Court spelt out the principles for framing of charge and discharged the accused and held that for framing of a charge and for discharging the accused under Sections 227 and 228 of the Criminal Procedure Code the Court must go through the evidence in its totality and consider the overall effect as well as the large probabilities of the case without of course going into the details of that evidence as if to assess it as at the time of the conclusion of the trial. If the material made available by the investigation agencies broadly reveals the commission of a particular offence by an accused or even the likelihood of his having committed such offence, the charge is then to be framed against him. For this purpose even a grave suspicion should be sufficient to make such a charge irrespective of the fact that the ultimate result of the trial may lead to a conviction or acquittal of the accused while reiterating that each case depends upon its particular facts and circumstances.

13. In **Shaikh Hussain** (supra), a learned Single Judge of this Court found that the material placed before the Court was of such nature that it would not result in conviction and quashed the proceedings in the facts at large. This judgment is clearly distinguishable and like the preceding judgments

does not at all substantiate the case of the petitioner for quashing of the order framing charge against him.

14. A reference was also made by Ms. Nagvenkar, learned Counsel appearing for the petitioner to the panchanama drawn by the Police pursuant to which the broken bottles and a stone came to be attached by the Police in the course of the investigation. A reference to the Manual relating to the procedure for search no doubt has to be conducted in the matter provided therein but all these aspects are available to the petitioner to canvass at the stage when the Trial Court proceeds with the trial and it is not open and available to the petitioner to make a case for the quashing of the orders under challenge.

15. The orders as passed by the learned JMFC and Additional Sessions Judge at Mapusa do not call for any interference even considering the judgments relied upon by the learned Counsel appearing for the petitioner. In that view of the matter, i do not find any merit in the petition and hence pass the following :

ORDER

Rule is discharged.

Writ Petition stands dismissed.

NUTAN D. SARDESSAI J.

arp/*