

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 113 OF 2018

Aleixo Arnolfo Pereira ... Petitioner

Versus

Verna Police Station and others. ... Respondents

Petitioner in person.

Mr. Mahesh Amonkar, Additional Government Advocate for
Respondent Nos.1, 2, 4 and 5.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 22 October 2018.

P.C. :

The Petitioner has sought to quash the First Information Report No.133/2015 registered at Verna Police Station under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code, Section 8 of the Goa Children's Act, 2003 and Sections 3 and 25 of the Arms Act.

2. The First Information Report came to be lodged by the Respondents-Complainants on 16 December 2015, which reads thus:

“I was sick and was sleeping around 9.35 PM On 16/12/2015, I Just went and set outside and saw Alexi pereisa my landlord coming towards my house. I asked him what happened he never listen to me and went in front of the house and stated hitting my son and the his tuition students, and he removed his rife and started running behind the student firing all over along with his friend Diego there were more than 100 student present all of them running around then he came near me and he hit me with a chair, and slapped me, he was firing bad words all the time to me and my family, he was drunk and his rifle he was firing all over. Please request to take action on him as early he hit my son badly, my son dont want to compliant because he is scared of him and he even when police came he hit them, please take action”.

3. The Petitioner has invoked the jurisdiction under Article 226 of the Constitution of India and the inherent power under Section 482 of the Code of Criminal Procedure. It is settled law that the power to quash an investigation has to be used sparingly and only where the interest of justice so warrants. These principles have been laid down by the Apex Court in the case of *State of Haryana and others Vs. Bhajan Lal and others*¹ as under:

(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

¹ 1992 Supp (1) SCC 335

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.”

4. Keeping in mind the above principles of law, the contention of the Petitioner will have to be examined.

5. The Petitioner has raised three contentions. Firstly, he submitted that even though the complaint itself discloses that the Petitioner alleged to have slapped the police, no offence of assaulting any Police Officer was registered against the Petitioner. He submitted that therefore, reading the complaint in its totality, since it is impossible that an offence would not have been registered for assaulting the Police Officer, the other parts of the complaint are not believable. The Petitioner relied upon the observations made by the Goa Children's Court while granting the bail and by the learned Single Judge of this Court while deciding the anticipatory bail application. He contended that they need to be taken into consideration. He also submitted that conditions have been imposed on the Petitioner which also need to be taken into consideration while exercising the power under Section 482 of the Code of Criminal Procedure and under Article 226 of the Constitution of India. The

Petitioner in person further submitted that the Complaint has now been withdrawn by the Complainant and the Complainant had appeared with his advocate and, therefore, there is no reason or purpose to proceed with the investigation. It was also contended that the same Police Officer in some other offence had assaulted the Petitioner and, therefore, the prosecution launched is malafide.

6. Reply is filed by the Respondents-Investigation Authorities. The learned Public Prosecutor, to a query in respect of the investigation and the statements made by the other witnesses, has placed before us a Investigation file containing the statements, which we have perused.

7. The contention regarding not registering an offence for assaulting the Police Officer is concerned, while exercising this power, the complaint cannot be dissected in such a manner. The allegations taken in its totality are serious. For various reasons the Police may not have registered an offence for an alleged assault on the Police Officer. That does not *ipso facto* mean that the other averments are untrue. As regards the observations made in the bail application, they are essentially for the purpose of consideration of bail. That cannot straight away be used to hold that no case is made out even to

proceed with the investigation, which obviously will require much higher degree of scrutiny. As regards withdrawal of the complaint is concerned, it is pointed out to us that the Petitioner is the landlord. There are total number of 37 cases registered against the Applicant; 27 cases under IPC, 03 non-cognizable cases and 02 Chapter cases are filed. Considering these circumstances, merely because the complainant has withdrawn the complaint, which could be for various reasons, which we do not wish to elaborate at this stage, the investigation cannot be quashed and set aside. Whatever the defences the Petitioner has, can be taken by the Petitioner in the trial that would be conducted. It is also contended that the affidavit in reply is not signed. What the Investigating Authorities are placed before us is the progress in the investigation. Apart from this, the file is also placed on record which we have perused.

8. We are of the opinion that this is not a fit case to exercise the power under Article 226 of the Constitution of India and under Section 482 of the Code of the Criminal Procedure. The Criminal Writ Petition is accordingly dismissed. We make it clear that we have made the above observations in the context of non-exercise of our power under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure and the trial will be

conducted on its own merits and all the contentions and the defence of the Petitioner in the trial are kept open.

9. The Criminal Writ Petition is disposed of accordingly.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.