

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.151 OF 2018

Gurudas Arjun Parwar. Petitioner.
Versus
State of Goa, through Police Inspector
Bicholim and others. Respondents

Mr. Chaitanya P. Padgaonkar, Advocate for the Petitioner.

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

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

Date : 31 October 2018.

P.C.:

Heard learned Counsel for the parties.

2. Though the Petitioner has made various prayers such as transfer of the investigation to the Central Bureau, Crime Branch, at Panaji for re-investigation and for setting aside of the order dated 11 January 2017, the primary grievance raised by the Petitioner is that one of the persons named in the complaint and made as accused No.2, has been released under Section 169 of the Criminal Procedure Code on the basis of his confessional statement. The Petitioner had approached the learned Children's Court with the identical grievance and an order was passed by the Children's Court on 15 January 2018, rejecting the Application.

4. As far as transfer is concerned, except pointing out how the Petitioners are dissatisfied with the progress of the investigation, nothing further is pointed out as to why the matter needs to be transferred to the Central Bureau, Crime Branch, Panaji. It is settled that power to transfer to CBI is not to be resorted to lightly and merely on the asking. We find no such material placed on record.

5. As regards the accused No.2 being released under Section 169 of Cr.P.C. is concerned, it is pointed out to us that the trial has now substantially proceeded and as many as seven witnesses have been examined. The Petitioner, by approaching this Court with unexplained delay, has allowed this position. Even though the Accused No.2 has been released under Section 169 Cr.P.C., does not mean that the Children's Court has no power whatsoever. If it comes to the conclusion during the trial that the said person also needs to be made as an accused, it has power to make the person accused. This power is explicitly conferred under the Code.

6. At this stage, the learned Counsel for the Petitioner submitted that the Court may not comment on the merits of the order releasing the Accused No.2 as the Petitioner during his evidence would make an attempt to make out a case before the

learned Magistrate to examine his power under the Code to make the said person as an accused. In view of this position, without commenting on the merits of the matter on this aspect and leaving it entirely to the Children's Court to proceed as per law, we dispose of the Writ Petition.

7. The Writ Petition is, accordingly, disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.