

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION**
NOS. 59/2017 AND 66/2017**CRIMINAL REVISION APPLICATION NO. 59 OF 2017**

1. Mr. Shaba Voizo, S/o Bhikru Voizo,
Aged, 68 years, Male, Indian
National, R/o H. No. 615,
Molorem, Khola, Canacona.
2. Mr. Pandhari @ Babu Prabhu
Dessai, S/o Gurudas Prabhu
Dessai, Aged 52 years, Male Indian
National, R/o H.No. 415, Mollorem
Khola, Canacona, Goa - 403 702. Petitioners

Versus

1. State of Goa, Through Officer in
Charge/Police Inspector, Canacona
Police Station, Canacona, Goa -
403 702.
2. Public Prosecutor, Bombay High
Court at Goa, Panaji. Respondents

Shri Carlos Alvares Ferreira with Shri Shane Gomes Pereira,
Advocates for the Petitioners.

Shri Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

CRIMINAL REVISION APPLICATION NO. 66 OF 2017

1. Mr. Shaba Voizo, S/o Bhikru Voizo,
Aged, 68 years, Male, Indian
National, R/o H. No. 615,
Molorem, Khola, Canacona.
2. Mr. Pandhari @ Babu Prabhu
Dessai, S/o Gurudas Prabhu

Dessai, Aged 52 years, Male Indian
National, R/o H.No. 415, Mollorem
Khola, Canacona, Goa - 403 702. Petitioners

Versus

1. Mr. Gopal Balaji Prabhu Konkar,
Son of Balaji Bhagwant Prabhu
Konkar, Aged 68 years, Resident of
Samadhan, A4, Malbhat, Margao,
Goa - 403 601.
2. State of Goa, Through Officer in
Charge/Police Inspector, Canacona
Police Station, Canacona, Goa -
403 702.
3. Public Prosecutor, Bombay High
Court at Goa, Panaji. Respondents

Shri Carlos Alvares Ferreira with Shri Shane Gomes Pereira,
Advocates for the Petitioners.

Shri Arun De Sa, Advocate for the Respondent No. 1.

Shri Pravin Faldessai, Additional Public Prosecutor for the
Respondent Nos. 2 and 3.

CORAM:- C. V. BHADANG, J.

DATE:- 20th MARCH 2018

ORAL ORDER :

Both these Criminal Revision Applications are
between the same parties and arise out of the order passed by
the learned Judicial Magistrate First Class at Canacona in
Criminal Case No. 67/AOA/TCP/2015. As such, they are being
disposed of by this common order.

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

That, Gopal Balaji Prabhu Konkar (the complainant) is the owner of the property surveyed under No. 207/09 of Cola village in Canacona Taluka. The said property has a hilly terrain and a steep gradient. According to the complainant, the property has picturesque look and is full of cashew and coconut plantation, which is in possession and enjoyment of the complainant.

On 08.05.2014, when the complainant visited the said property, he noticed that the petitioners with the aid of heavy earth moving machinery had undertaken the work of hill cutting of the steep gradient in order to make an access to their property, which is situated adjacent to the land Survey No. 207/2009. The complainant alleged that the act of the petitioners was in clear violation of Section 17A of the Goa, Daman and Diu Town and Country Planning Act, 1974 (TCP Act, for short). It was claimed that the petitioners had criminally trespassed in the property of the complainant, causing mischief by hill cutting, thereby exposing the land to dangers of land slides. It was also claimed that the petitioners have stolen the mud and dumped it into their own property.

Thus, according to the complainant, apart from the offence under Section 17A of the Act, the petitioners had also committed an offence under Section 379 and Section 447 of the Indian Penal Code (IPC, for short).

3. The complainant reported the matter to P.I., P.S. Canacona on 28.05.2014 and it was also reported to the Deputy Collector and SDM, Margao, prior thereto i.e. on 14.05.2014. It appears that an offence came to be registered against the petitioners with P.S. Canacona for the offence punishable under Section 17A of the TCP Act on 29.10.2014 vide Crime No. 90/2014. After investigation, a charge sheet came to be filed against the petitioners for the offence punishable under Section 17A of the TCP Act, before the learned Magistrate at Canacona.

4. It appears that the petitioners filed an application before the learned Magistrate under Section 258 of the Code of Criminal Procedure (Code, for short) to stop the proceedings and for their discharge, on the ground that the complaint has been filed beyond the period of limitation as prescribed under Section 468 of the Code.

5. The application was opposed on behalf of the State. It was pointed out that the complaint was filed on 29.10.2014 and a panchanama of the site was drawn on the same day. The statement of the eye witnesses came to be recorded on 15.11.2014 and on 07.04.2015, the JCB bearing No. KA-30-M-4784, which was used for hill cutting was traced and was seized by the police. It was further pointed out that on completion of the investigation, a report was sent to the Senior Town Planner on 26.05.2015. The Senior Town Planner visited the site and granted sanction to the prosecution on 07.07.2015 and on receipt of such sanction, the charge sheet was filed on 25.07.2015. It was contended that the period spent for obtaining sanction has to be excluded and in that case, the charge sheet would be within limitation. In the reply, the police prosecutor also claimed that the complaint discloses commission of offence under Sections 379 and 447 of IPC, as the petitioners had stolen about 25 truck loads of mud and in that view of the matter, sought rejection of the application filed by the petitioners under Section 258 of the Code.

6. The learned Magistrate by an order dated 05.08.2016, allowed the application filed by the petitioners, directing stoppage of the proceedings and discharged the

petitioners of the offence punishable under Section 17A of the TCP Act. Feeling aggrieved, the State as well as the complainant, challenged the same before the learned Sessions Judge by separate criminal revision applications being Criminal Revision Application Nos. 82/2016 and 80/2016 respectively. The learned Sessions Judge by a common judgment and order dated 19.08.2017 has allowed the criminal revision applications, thereby setting aside the order passed by the learned Magistrate and has restored the case on the file of the learned Magistrate at Canacona. Feeling aggrieved, the petitioners are before this Court.

7. I have heard Shri Ferreira, the learned Counsel for the petitioners, Shri Faldessai, the learned Additional Public Prosecutor for the State and Shri De Sa, the learned Counsel for the complainant. With the assistance of the learned Counsel for the parties, I have gone through the record and the order passed by the learned Magistrate and also the judgment of the learned Sessions Judge.

8. It is submitted by Shri Ferreira, the learned Counsel for the petitioners that the FIR and the consequent charge sheet was filed only for the offence punishable under Section

17A of the TCP Act. The contravention of Section 17A of the TCP Act, is punishable with simple imprisonment for a period, which may extend to one year or fine. It is thus submitted that the period of limitation for filing the charge sheet, according to Section 468 of the Code, would be one year. It is submitted that admittedly, the charge sheet is not filed within one year of the occurrence and therefore, the learned Magistrate was fully justified in directing stoppage of the proceedings and in discharging the petitioners. It is submitted that the learned Sessions Judge was in error in interfering with the order passed by the learned Magistrate. It is submitted that in any case, the criminal revision application filed by the complainant was not maintainable. In this regard, reliance is placed on the decision of the Supreme Court in the case of **Thakur Ram and Others Vs. State of Bihar, AIR 1966 SC 911**.

9. Insofar as the offence under the Indian Penal Code is concerned, it is submitted that neither the FIR nor the charge sheet, mentions any offence under the Indian Penal Code and the remedy at the highest available to the complainant was to move the Magistrate under Section 156(3) of the Code. He therefore submitted that the impugned order passed by the learned Sessions Judge requires interference.

10. The learned Additional Public Prosecutor has supported the impugned judgment. It is submitted that the various complaints lodged by the complainant clearly make out the offence under Section 379 and Section 447 of IPC, apart from the contravention of Section 17A of the TCP Act. It is submitted that the police prosecutor in his wisdom had pointed out that the offence under the IPC is clearly made out. It is submitted that it is always open to the Trial Court to direct further investigation in the matter, if it is found necessary. It is submitted that the time taken for obtaining the sanction was required to be excluded and the charge sheet cannot be said to be filed beyond the period of limitation.

11. The learned Counsel for the complainant submitted that under the amended Section 2(wa) of the Code, which defines a victim, the revision application filed by the complainant was maintainable. It is pointed out that in any event, there was a criminal revision filed by the State also. Thus, the issue as to maintainability of the revision application filed by the complainant, pales into insignificance.

12. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for

interference is made out.

13. A bare perusal of the various complaints lodged by the complainant to P.S. Canacona would *prima facie* disclose that apart from the contravention of Section 17A of the TCP Act, it was also alleged that the petitioners had criminally trespassed into the land of the complainant and had carried the mud out of the hill cutting and had dumped it in their own land. Thus, the complaint clearly mentions an offence under Section 379 and Section 424 of IPC, apart from the contravention of Section 17A of the TCP Act. It is however true that the FIR was registered and the consequent charge sheet was filed only for contravention of Section 17A of the TCP Act. The learned Magistrate discharged the petitioners on the ground that the charge sheet was filed beyond the period of limitation of one year. While holding so, the learned Magistrate has considered the provisions of Section 468, 469 and 470 of the Code and has held that even after excluding the period spent for obtaining the sanction, the charge sheet was not filed within one year. Insofar as the offences under the IPC are concerned, the learned Magistrate has found that there is no application by the Investigating Officer, seeking to add the offence under Section 379 and Section 447 of IPC and the said

offences were only mentioned in the reply filed by the Additional Public Prosecutor. It was also found that there was no explanation for the delay in filing the charge sheet, nor the charge sheet was accompanied by an application for condonation of delay. The learned Magistrate then relied upon the decision of this Court in the case of **Khalid Ahemi Vs. State of Maharashtra, 2010 ALL MR (Cri) 2574**, in order to hold that in the absence of the request for condonation of delay by the prosecution, on the basis of valid reasons, either in the charge sheet or by separate application, the period cannot be condoned. The learned Magistrate has also noticed that in such a case, the fact that the cognizance is taken, shall have no effect of the delay being condoned. The learned Magistrate has also found that the sanction in this case was itself sought after the expiration of the limitation period of one year and therefore, the time spent in obtaining the sanction cannot be excluded.

14. The learned Sessions Judge however found that the complaint also discloses the commission of the offence under Section 379 and Section 447 of IPC and the offence under Section 379 of IPC is cognizable and punishable with three years imprisonment, where the period of limitation for taking

cognizance would be three years. The learned Sessions Judge has then noticed that under Section 468(3) of the Code, the period in relation to offences, which may be tried together, shall be determined with reference to the offence, which is punishable with more severe punishment. In short, the learned Sessions Judge found that the matter would be governed by three years limitation period, in as much as, the offence under Section 379 of IPC was also disclosed. The learned Sessions Judge in this regard has noted that an application was filed on behalf of the prosecution at Exhibit-16 for production of the complaint dated 28.05.2014 and 30.05.2014, by the complainant to P.I., Canacona and considering the powers available under Section 216 of the Code, the Court was able to alter or add to the charge at any time. The learned Sessions Judge after placing reliance on the decision of the Supreme Court in the case of **Hassan Bhai Valibhai Vs. State of Gujarat, 2004 SCC (Cri) 1603** and **Kantilal Chandulal Mehta Vs. State of Maharashtra, AIR 1970 SC 359** found that the question whether, further investigation is warranted, can also be considered by the Court as the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth. Ultimately, the learned Sessions Judge has found that the

Magistrate was required to look into the broad probabilities of the case and was required to examine whether or not, the material produced was sufficient to *prima facie* disclose an offence under Section 379 and Section 447 of IPC and could not have discharged the petitioners by invoking Section 258 of IPC, merely on the ground that there was no application by the Investigating Officer for addition of the offences under the IPC.

15. The question in the given circumstances is whether, the impugned judgment calls for interference by this Court in the exercise of the revisional jurisdiction and the answer has to be in the negative.

16. Before going to the merits, it is necessary to deal with the contention about the maintainability of the Criminal Revision Application No. 80/2016 by the complainant before the learned Sessions Judge. This may not detain me long for the simple reason that there was also a criminal revision application filed by the State. Even assuming for a moment that the criminal revision filed by the complainant was not maintainable, nothing really turns on the said aspect. In my considered view, the learned Additional Public Prosecutor is right in submitting that the question of the maintainability of

the revision application filed by the complainant, pales into insignificance, in as much as, there was a revision application by the State also, before the learned Sessions Judge. However, that apart, it is difficult to accept that the criminal revision application by the complainant would not be maintainable, particularly, in view of the fact that the complainant would be a victim within the meaning of Section 2(wa) of the Code. In an appropriate case, the Sessions Judge can also take suo motu cognizance and entertain a revision once, the order passed by the Magistrate is brought to the notice of the Sessions Judge and the Sessions Judge finds that it requires interference. Reliance placed on the decision of the Supreme Court in the case of **Thakur Ram and others** (supra) is misplaced as the said case turned on its own facts and is clearly distinguishable. Thus, the contention in this regard cannot be accepted.

17. Coming to the merits, the record discloses that the complainant addressed a communication on 09.05.2014 to the Deputy Collector and SDM, Canacona along with the Deputy Town Planner and the P.I., Canacona, informing that there was an incident of illegal hill cutting on 21.03.2014, by the petitioners in the land belonging to the complainant, which came to the knowledge of the complainant on 08.05.2014. The

charge sheet in this case was filed on 25.07.2015. The record further discloses that the complainant then addressed a communication dated 14.05.2014 to the Deputy Collector and the SDM, for taking action, which was followed by two complaints dated 28.05.2014 and 30.05.2014 to P.I. Canacona. It appears that the Mamlatdar, Canacona sent a report to the Town and Country Planning Department on 15.07.2014, enclosing the report/check-list from the Talathi. Ultimately, the Draftsman Grade-I from the office of the Town and Country Planning Department made a report to the P.I. Canacona on 29.10.2014, stating that there was huge cutting of the hill to the extent of 60 x 3.50 x 3.50 metres carried out in Survey No. 207/09 and it was also observed that the mud was drawn and dumped in Survey No. 207/09. It was on the basis of this report that the FIR came to be registered.

18. The learned Sessions Judge has found and to my mind rightly so that the offence having been noticed on 08.05.2014, the period for filing charge sheet expired on or about 08.05.2015 and the application for sanction itself having been made on 26.05.2015, the period spent for obtaining the sanction i.e. from 26.05.2015 to 07.07.2015 could not have been excluded. However, the question essentially is about

whether, the offence under Section 379 and Section 447 of IPC were *prima facie* disclosed, on the basis of the complaint and the material produced along with the charge sheet. In this regard, the reply filed by the learned APP to the application for stoppage of proceedings would make it clear that the learned APP had brought to the notice of the learned Magistrate that the complaint also disclosed the commission of an offence under Section 379 and Section 447 of IPC. In view of the provisions of Section 216 of the Code, it was necessary for the learned Magistrate to have looked into the entire material, before directing stoppage of the proceedings and discharging the petitioners.

19. The Hon'ble Supreme Court in the case of **Hassan Bhai Valibhai** (supra) has held that there is no bar for conducting further investigation even if, the Court has taken cognizance. It has been *inter alia* held that when defective investigation comes to light, during the course of the trial, it may be cured by further investigation, if circumstances, so permit as the object of any trial is to arrive at the truth and to do real, substantial, as well as effective justice. Section 173(8) of the Code permits further investigation by the Investigating Officer even *dehors* any direction from the Court, even after

the Court takes cognizance of any offence.

20. The learned Sessions Judge, in my considered view, is right in holding that the Magistrate could not have discharged the petitioners under Section 258 of the Code in the given circumstances. The impugned judgment of the learned Sessions Judge does not exhibit any infirmity or a jurisdictional error, requiring interference in the revisional jurisdiction of this Court. In the result, the Criminal Revision Applications are dismissed.

C. V. BHADANG, J.

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