

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.185 OF 2017

Meena Nagvenkar

... Petitioner

Versus

The State, Thr. The Police Inspector,
Panaji and another.

.... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor for respondent
nos.1 and 2.

***Coram : R.M. Borde &
Prithviraj K. Chavan, JJ.***

Date : 27.11.2018

P.C. :

By this petition under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for transfer of investigation in F.I.R. bearing No.222/2017 registered at Panaji Police Station to the Crime Branch *inter alia* seeking direction to file Status Report by respondent no.2- Superintendent of Police, North Goa.

2. We have heard the learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent nos.1 and 2.

3. Brief facts of the case are that, the petitioner claims that she has been residing along with her sister and mother in a flat on third floor at 'Madhuban building', 31st January road, Panaji as a tenant for 14 years. The respondent no.3 was the owner of the said flat. The petitioner contends that she agreed to purchase the flat from the respondent no.3 for a consideration of Rs.20,00,000/-. The amount of consideration was paid in installments by July 2017. Subsequently, the sister of the petitioner namely Leena got married in the year 2007 and has been residing with her husband at Taleigao. The petitioner has continued her stay in the said flat.

4. The petitioner contends that around six months ago around 9 p.m. a lady came to the flat and informed the petitioner that she is the daughter of respondent no.3 and that she is the owner of the said flat. The said lady demanded documents from the petitioner pertaining to the flat. However, the petitioner refused to give any documents and asked her to talk to her parents. Thereafter the wife of respondent no.3 came to the petitioner's flat and asked for the original copy of the Agreement of Sale. However, the petitioner told her that she would give her a photocopy and refused to give the original Agreement of Sale.

5. According to the petitioner, on 11.10.2017 when she returned home after a meeting at about 8.15 p.m. and opened the

door of her flat, all of a sudden, three men and three women, who were hiding on the staircase forced their way inside the flat and sat on sofa in a living room. Some of them started opening drawers etc. The petitioner was afraid for her safety and did not know how to react. Her employee Pradeep Parab entered the flat and when he saw strangers in the flat he was stunned and did not know what was happening. The petitioner shouted out and called the neighbours. The persons who alleged to have trespassed in the flat were one Sairaj Dhond resident of Miramar, Panaji, Goa and a lady probably one Vandana Shirodkar. They threatened the neighbour of the petitioner namely Terrance Moniz, who tried to intervene. It is alleged that Sairaj Dhond pushed the petitioner outside the flat and one of the ladies slapped her. The neighbours, who had gathered over there tried to request the assailants, however, they did not open the door. The petitioner dialled number 100. Two police constables came to the flat and knocked the door. However, those persons did not open the door and, thereafter the police constables asked the petitioner to approach the Police Station and register an F.I.R.

6. Accordingly, the petitioner lodged an F.I.R. bearing no. 222/2017 under Sections 448, 341, 504 and 506 read with Section 34 of the Indian Penal Code. It is the contention of the petitioner that the P.S.I. on duty did not record the petitioner's complaint properly pertaining to the details of the incident even though the petitioner was

forcibly dispossessed by the accused. It is also alleged by the petitioner that respondent no.1 did not record the statements of the eye witnesses. The panchanama was not drawn properly and the flat was not sealed pending investigation. It is also alleged that all the belongings of the petitioner such as her documents, jewellery, wallet, mobile, cash, clothes etc., could not be recovered by the petitioner till date. She was left without shelter and is living with her friends. It is contended that the petitioner again approached the Police Station on 12.10.2017 at 1.30 p.m. She informed the Police Station about the identity of some of the accused including the said Sairaj Dhond and others. Due to the intervention of Advocate for the petitioner, the respondent no.1 asked them to meet him on 13.10.2017. He had also called respondent no.3 at the police station.

7. Thus, it is the contention of the petitioner that despite pursuing the matter repeatedly with the respondent nos.1 and 2, nothing has been done against the accused in the light of the fact that Sairaj Dhond is the son of Gaurish Dhond, who is an influential leader of BJP and, therefore, the respondent nos.1 and 2 are not taking any action. The petitioner, therefore, sought intervention of this Court by transferring the investigation to the Crime Branch.

8. Meanwhile, various directions have been issued by us to report the progress of investigation directing the Superintendent of

Police, North Goa, to monitor the same personally.

9. It would be apposite to go through the affidavit of respondent no.3, who came to be deleted, at the request of the petitioner on 23.11.2017 as he is neither the complainant nor an accused in the matter but, in fact, is the owner of the subject flat. The sum and substance of the affidavit in reply is that the petitioner has neither produced any documentary evidence establishing her status as a tenant/licensee of the said flat nor anything to show that she had purchased the flat. The First Information Report lodged by the petitioner is totally false and misconceived.

10. It is stated in the affidavit that the subject flat was purchased by respondent no.3 and his wife vide Sale Deed dated 16.2.1982. Its copy is annexed at Exhibit R-1. The said flat was transferred in favour of their daughter namely Vandana Shirodkar, who had filed an F.I.R. on the same day with the same Police Station against the petitioner (under Sections 427, 506 (ii), 504 read with Section 34 of the Indian Penal Code). Respondent no.3 further states that his daughter Vandana Shirodkar resides at Pune and keeps the flat locked. As and when she comes to Goa, she resides in the said flat. As such, ever since the execution of the Gift Deed in her favour by respondent no.3 on 28.4.2007 the subject flat was not in possession of respondent no.3 and, therefore, there was no question of execution of

Agreement of Sale in the year 2009 as alleged by the petitioner which is totally false. The respondent no.3 has also annexed copy of the Gift Deed dated 28.4.2007, which is at Exhibit R-2.

11. The respondent no.3 further states that the petitioner has failed to demonstrate that she had agreed to purchase the said flat for a consideration of Rs.20,00,000/- and the Agreement of Sale was executed between her and the respondent no.3 in 2009 and further she had paid of Rs.20,00,000/- to the respondent no.3. This fact has also been substantiated by the Investigating Officer Sidhant Shirodkar in his affidavit in reply dated 31.10.2017.

12. Since the respondent no.3 was not the owner of the flat in the year 2009 there was no question of he executing an Agreement of Sale in respect of the said flat with the petitioner. As regards the incident, it is stated by respondent no.3 that his daughter came to Goa from Pune on 11.10.2007. She opened the flat with her key. She noticed that certain unknown things had been kept in the said flat. At that time, a lady came to the flat, who tried to open the door. She started abusing Vandana Shirodkar in filthy language by saying that it is her flat and, therefore, she wants to enter into it. She was accompanied with another man. They criminally trespassed in the subject flat and, therefore, Vandana Shirodkar called other members of the family namely Sairaj Dhond - grand-son of respondent no.3 and

the neighbours. The said lady threatened to lodge a false complaint against Vandana Shirodkar. The said Vandana Shirodkar lodged an FIR with Panaji Police Station on 12.10.2017 against the petitioner and one Pradeep Nagvekar under Sections 427, 504, 506 (ii) read with Section 34 of the Indian Penal Code.

13. The affidavit of the Police Inspector Sidhant Shirodkar of the Panaji Police Station reveals filing of counter cases by the petitioner on the one hand and Vandana Shirodkar on the other hand against each other. He categorically states that despite request to the petitioner to furnish documentary evidence about the ownership of the flat, till date nothing has been filed in order to substantiate her claim of ownership in respect of the subject flat. However, Mrs. Vandana Shirodkar produced ownership documents pertaining to the said flat. It appears that the Police Inspector had recorded the statements of the witnesses and on the basis of the complaint of Vandana Shirodkar, Chapter proceedings under Section 145 of the Code of Criminal Procedure has been initiated before the S.D.M. Tiswadi. It is also apparent from the affidavit of the Police Inspector that at the time of preparing panchanama in the presence of panch witnesses all the belongings of the petitioner have been given to her of which she took possession from the said flat.

14. An interesting fact has been brought on record by the

Police Inspector that the original Leave and Licence Agreement between respondent no.3 was with one Leena V. Nagvenkar on a green paper of five pages wherein there is mention of the flat no. T-1 of respondent no.3 which was rented to Leena V. Nagvenkar for 11 months. He further noticed two xerox copies of the said Agreement wherein certain corrections and alterations were noticed, which were made with pen and white ink. The copy reveals that by using white ink on the name and date, the name of the petitioner has been written.

15. It is needless to go into the merits of the rival contentions of the petitioner on the one hand and Vandana Shirodkar on the other hand. What transpires from the affidavit of the Police Inspector as well as from the affidavit of respondent no.3 is that the Investigating machinery has been conducting the investigation in a right direction under the watchful eye of the Superintendent of Police, North Goa.

16. The affidavits of respondent no.2-Superintendent of Police dated 11.1.2018 and 26.4.2018 indicate as to how the investigation is being carried out in respect of both the First Information Reports and cross-complaints filed by the petitioner as well as Vandana Shirodkar. The respondent no.2 has reiterated the fact that the Investigating Officer has recorded the statements of all the concerned witnesses including eye witnesses and collected the

documents of the ownership with respect to the subject flat. Respondent no.2 has substantiated what has been stated by the Police Inspector Sidhant Shirodkar.

17. We are convinced and satisfied that the investigation is being carried out in a right direction and as per the procedure. It reveals from the affidavit of respondent no.2 and as stated hereinbefore that during investigation certain questioned documents were found in the subject flat like Leave and Licence Agreement between respondent no.3 and Leena Nagvenkar during the house search panchanama. It was noticed that the said agreements were photo-copied wherein some alterations were made by using white ink and signatures were also practiced resembling to that of respondent no.3 who has produced the ownership documents of that flat. Respondent no.2, who is a responsible Officer of the Police Department states that from the investigation conducted so far it reveals that the petitioner is trying to take possession of the flat by using the Police Department rather than approaching proper court of law.

18. Thus, it can be seen that respondent no.2 has been monitoring the investigation and issued all necessary directions for collecting the evidence as well as recording the statements of more witnesses, if necessary, and to file charge-sheet under Section 173 of the Code of Criminal Procedure.

19. Having considered the facts and the material on record, we find that there is absolutely no necessity to invoke the jurisdiction of this Court under Section 482 of Code of Criminal Procedure to transfer the investigation to the Crime Branch. Needless to say that we have not gone into the rival contentions of the parties on merits.

20. The petition is devoid of any substance and, therefore, needs to be rejected. The petition stands rejected.

Prithviraj K. Chavan, J.

R.M. Borde, J.

....