

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL CONTEMPT PETITION NO. 1 OF 2018
IN
CRIMINAL APPLICATION (MAIN) NO. 240 OF 2017

ALEIXO ARNOLFO PEREIRA.,
son of F. X. Pereira, aged 59 years,
Indian National, resident of
House No.150, Utorda,
Salcete- Goa.

..... Petitioner

Versus

1) State of Goa,
through the Police inspector of
Verna Police Station,
PSI Raghoba Kamat,
Verna-Goa.

2) Sairaj Naik,
son of Badal Naik,
aged 25 years, resident of
House No.132/1, Luiswaddo,
Calata, Majorda, Salcete-Goa.

..... Respondents

Mr. Dhaval Damodar Zaveri, Advocate for the Appellant.

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

Coram:- C. V. BHADANG, J.
Date:- 16th March 2018.

P.C.:

The Affidavit filed by the petitioner is taken on record.

2. Although this petition is registered as a criminal contempt petition in the given circumstances it ought to have been registered as a Civil Contempt

petition. However, it is not necessary to direct re-registration of the contempt petition as even otherwise I do not find that any case for taking cognizance is made out.

3. The respondent no.2, who is the accused no.1 in Crime No.58/2017 registered with P.S. Verna under section 143, 147, 148, 341, 326, 427 r/w 149 of I.P.C. was granted anticipatory bail by the learned Sessions Judge. That was challenged by the petitioner/complainant before this Court in Criminal Misc. Application Main No.240/2017. This Court by an order dated 16/11/2017 allowed the application for cancellation and the anticipatory bail granted to the first respondent came to be cancelled. The first respondent is the Investigating Officer. The allegation is that on cancellation of the bail, the first respondent was granted liberty to take the second respondent in custody forthwith, which the first respondent has failed to do. This according to the petitioner is in contempt of this Court.

4. I have heard Shri Zaveri, the learned counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent/State.

5. The order passed by this Court to the extent it is relevant reads thus:

"Thus, taking the totality of the circumstances into account that the learned Additional Sessions Judge had ignored vital material and passed the order

which is patently illegal, I deem it appropriate in the circumstances to set aside the same in exercise of the powers conferred under section 439(2) Cr.P.C. Having cancelled the bail granted in favour of the respondent no.2, it follows as a matter of course that the respondent no.1 shall be at liberty to take him in custody forthwith."

6. It can thus clearly be seen that all that this Court had said while cancelling the anticipatory bail is that the respondent no.1/Investigating Officer shall be at liberty to take the second respondent in custody forthwith. By no stretch of imagination the said order can be read as a direction to the respondent no.1 to take the second respondent in custody. Even otherwise, it is now well settled that the Court cannot direct the Investigating Officer to arrest an accused. The petition does not make out any case for taking action for contempt. The petition is misconceived and is accordingly dismissed.

C. V. BHADANG, J.

ap/-