

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 96 OF 2019.**

1. Shri Manish karapurkar,
(Then) Publisher, Goa Edition
The Times of India,
having its Branch office at
Vivenda de Hassan,
D. Bandodkar Road, Miramar,
Panaji 403 001 and presently
Residing at 3 F 1, Dukle Residency,
Tambdi Mati, Taleigao,
Goa – 403 001.
 2. Shri K. R. Sreenivas,
(Then) Editor, Goa Edition,
The Times of India,
having its Branch office at
'Vivenda de Hassan,
D. Bandodkar Road, Miramar,
Panaji 403 001 and presently
Residing at Daily Thanthi,
No.86, E.V.K. Sampath Road,
Vepery, Chennai – 600007.
- ... Petitioners.

Versus

1. Mr. Antonio Braganza,
Major, son of late Gregorio
Braganza,
Resident of H.No. E-3/40A,
Tivai Vaddo, Calangute,
Bardez, Goa.

2. Mrs. Aldila Braganza,
Major, daughter of late
Avelino Fernandes,
Presently residing at
No.E-3/40A,
Bardez, Goa.

3. State
Through PP,
High Court of Bombay
at Panaji, Goa.

... Respondents

Shri Arun Bras de Sa, Advocate for the Petitioner.

Shri S.R.Rivankar, Public Prosecutor for the State/Respondent
No.3.

Respondent No.2 in person.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 11.12.2019.

Pronounced on: 18.12.2019.

JUDGMENT:

Heard Shri Arun Bras De Sa, learned Advocate for the
Petitioners and Shri S.R.Rivankar, learned Public Prosecutor on
behalf of the State/respondent no.3.

2. Rule

3. Heard forthwith with the consent of the learned Counsel for the parties.

4. Respondent no.2 waives service and Shri S. R. Rivankar, learned Public Prosecutor on behalf of respondent no.3.

5. This Writ Petition invoking the jurisdiction of this Court under Section 482 of Cr.P.C. takes exception to the order passed by the learned Addl. Sessions Judge, North Goa, Panaji dismissing the Revision Application filed by the petitioner dated 03.10.2017 pursuant to which it confirmed the order of the learned Judicial Magistrate, First Class issuing summons to the petitioners herein.

6. Heard Shri Arun Bras de Sa learned Advocate for the petitioner who contended at the outset as to how the reportage of the FIR could constitute defamation. He adverted to the press release issued by the Calangute Police Station and submitted that the petitioners had published the said information as given by the Calangute Police and who had subsequently filed a charge sheet against the respondent no.2. He adverted to the FIR lodged by one Antoneto D'Souza at the Calangute Police Station alleging illegal acts to the respondent nos.1 and 2 and the newspaper report released by them wherein due care was taken to prefix the word alleged

and allegedly vis a vis the press release of the Police. Therefore, no offence of defamation was at all made out. The learned Addl. Sessions Judge in her impugned order had clearly recorded a finding that the reportage as made by the petitioners were justified as the complaint produced on record did allege the offences against the respondent nos.1 and 2. Yet however, the learned Addl. Sessions Judge at para 18 referred to the fact that there was no allegation in the complaint that the respondent nos.1 and 2 had represented themselves as Indians though they were foreign nationals and therefore concluding that the respondent no.2 was justified in filing the complaint against the petitioners for publishing the defamatory news article dated 20.07.2010 in the Times of India.

7. Shri De Sa, learned Advocate next adverted to the complaint filed by the respondent nos.1 and 2 against the petitioners and the original complainant Antoneto in which the respondent no.2 had clearly conceded that she was ordinarily a resident of UK and a business woman in London and that there were no basis for the respondent no.2. The respondent no.2 had alleged in her complaint that the said Antoneto had circulated the complaint dated 05.07.2012 to the press and the same came to be published by the petitioners. The complaint was totally silent on the registration of an FIR against the respondent no.2. There was no specific averment

in the complaint as to what constituted defamation. He placed reliance on **Youth Bar Association of India Vs. Union of India and another, {(2016) 9 SCC 473}, Rajendra Kumar Sitaram Pande and ors. Vs. Uttama and anr., {(1999) 3 SCC 134}, Primero Skill & Training Pvt. Ltd. Vs. Selima Publications Pvt. Ltd. & ors. CS (COMM) 1651/2016 & IA No.15902/2016** (unreported judgment of the Delhi High Court), **Mohammed Israth Vs. T.S. Haneefa, {Cri. O.P.No.1918 of 2013 & M.P.Nos.1 and 2 of 2013}** (unreported judgement of the Madras High Court.), **Shri Laxman Jairam Malvankar Vs. Smt. Reshma Ramesh Narvekar, {Second Appeal No.07 of 2005}, Maksud Saiyed Vs. State of Gujarat and ors., {(2008) 5 SCC 668}** and **Ramachandra Venkataramanan Vs M/s Shapoorji Pallonji & Company Ltd. & anr., {Criminal Writ Petition No. 5298 of 2018}** passed by a learned Single Judge of this Court to substantiate his case. Without prejudice however, Shri De Sa contended that he was ready to publish an article that the respondent no.1 was an Indian Citizen unlike the earlier report in the so called defamatory news item that both the respondent nos.1 and 2 were foreign nationals and as it was given on the basis of the mistaken facts. The respondent no.2 adverted to the grounds taken in the petition and then to the Criminal Misc. Application no.308/2019 filed by her seeking to produce additional documents and submitted that a notice was issued upon the

Anticipatory Bail Application moved at her instance, the say filed by the State in which there was a clear assertion that the investigation of the case was at an initial stage and yet stating that the offences committed by the respondent nos.1 and 2 were of a serious nature being that of forgery for the purpose of cheating and their presence being required at the Police Station for arrest and custodial interrogation for the purpose of the recovery of the original plan and the forged plan concerned in this case.

8. It was her further contention that the learned Addl. Sessions Judge had deemed it fit to order her release on bail upon examination of the police papers and after considering the fact that the offence was allegedly committed prior to 12.06.2012. There was no document with the Police to register an FIR nor was there any basis in the publication done by the petitioners. She next referred to the letter of the Goa Coastal Zone Management Authority dated 31.02.2016 where it had replied to the Calangute Police Station that what was received on behalf of the respondent no.1 was the photo copies of the documents and not any original records. The Panchayat had also lodged the complaint with the Calangute Police Station against the respondent nos.1 and 2 but no FIR was registered on such a complaint. The article published by the petitioners was false and defamatory. She however conceded that the only bonafide mistake made by the

petitioners was mentioning the nationality of one of them which did not constitute in law or on facts the offence punishable under Sections 500, 501 and 502 of I.P.C. The complaint dated 05.07.2012 and the news article printed on the 20.07.2012 were devoid of any evidence. There was prima facie fraud committed by the Calangute Police Station who on the one hand claimed that they had to recover the original and the forged plan knowing very well that the complainant Antoneto had not appended the original or the certified copies which was used as genuine before the GCZMA and the Panchayat and yet to proceed with the registration of the FIR against the respondent nos.1 and 2 followed by a chargesheet against them. The petition as such was liable for dismissal.

9. Shri S. R. Rivankar, learned Public Prosecutor stated that a part of the report published by the petitioners was not as per the press release issued by the office of the Superintendent of Police in the matter of reporting as "D'Souza alleged that besides submitting the forged documents the duo also falsely represented themselves as Indian Citizens when they were Portuguese passport holders and therefore foreign citizens". This reporting was never a part of the press release issued by the Calangute Police Station and to that extent, the petitioners could tender an apology considering the fact that there was no serious dispute that the respondent no.2 was an overseas citizen of India unlike the respondent no.1 who was an Indian National. Shri

De Sa, learned Advocate in reply conceded that the petitioners would fairly publish that the respondent no.1 was an Indian Citizen since their earlier report was on a mistaken fact unlike the respondent no.2 who was admittedly an overseas citizen of India.

10. I have considered the submissions, the judgments relied upon by the learned Advocates and the written synopsis placed on record by the respondent no.2 and decide the petition accordingly.

11. In **Rajagopal** (supra) the petition raised a question concerning the freedom of press vis a vis the right to privacy of the citizens of the Country. In that backdrop the Hon'ble Apex Court summarised the broad principles flowing from the discussion at paragraph 28 particularly sub para 2 reading thus:-

"(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offense should not further be subjected to the indignity of

her name and the incident being published in press/media”.

12. In **Youth Bar Association of India** (supra), the Hon’ble Apex Court held that “the FIRs registered in the Police Stations, excepting those pertaining to offences of a sensitive nature are required to be uploaded on the official websites of all the states and detailed directions issued in all the matters.”

13. In **Rajendra Kumar** (supra), the Hon’ble Apex Court at paragraph 7 held as below:-

“7. The next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under Sub-section (1) of Section 201, can it be said that a prima facie case exists for trial or Exception 8 to Section 499 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office using filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to

hold an enquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself."

14. In **Primero Skill & Training Pvt. Ltd.** (Supra), a

learned Single Judge of the Delhi High Court considered the English translation of the impugned allegedly defamatory newspaper article filed by the plaintiff, found that the plaintiff had not placed before it the complaint filed by the defendant no.7 before the Chief Judicial Magistrate, Hailakandi, Assam or the FIR registered thereon. It observed that it was however, not the case of the plaintiff that what was published in the impugned article was not the true narration of the contents of the complaint or of the FIR. The learned Judge considered the judgment in **Youth Bar Association** (supra), and held that as per the law declared by the Supreme Court as aforesaid, the contents of the FIR, irrespective of whether published in the newspaper as a news event or not, are in public domain. Once the Police itself as per the law declared by the Supreme Court is required to publish the FIR, I fail to see how the defendants no.1 to 6 as editor/publisher of the newspaper or the defendant no.7 as the complainant can be proceeded against in an action for defamation for publishing the contents thereof.

15. **Mohammed Israth** (supra), sought to quash the proceedings on the file of the learned Judicial Magistrate, First Class, Gudalur, Nilgiris being an action for defamation alleging that in publishing a news article the complainant was defamed and his reputation was ruined. What has been found to be defamatory is in effect the contents of a First Information

Report published as a news article. Although exceptions to Section 499 IPC including the first exception namely 'imputation of truth which public good requires to be made or published' is to be pleaded and proved, this Court is of the view that it would not be out of bounds to consider the possibility of conviction in a case of the present nature being bleak and on such consideration, order quash of proceedings of the case at the Court below. It considered the decision in **Primero Skill & Training Pvt. Ltd.** (supra) and allowed the petition.

16. In **Laxman Jairam Malvankar** (supra) a learned Single Judge of this Court considered the question whether the Police complaint is a public document and can be made available for publication in the press as one of the substantial questions of law and held at paragraph 13 that on a reading of the extract of the local daily news item which had appeared at internal page 7 that there was no direct imputation published against the plaintiff that he had done the acts as stated in that news item. The publication only narrated some facts as alleged by the defendant no.1 in the Police complaint. Besides, the first appellate Court had observed that the reading of the article showed that it was substantially a report of the complaint and also about the fact that the Police had not taken any action.

17. In **Maksud Sayed** (supra), the bank had floated a public issue of eight crores equity shares of ₹10/- each for cash at a premium of ₹17/-. The prospectus was published for the purpose of public issue and therein some false and misleading information had been given with regard to the sanction limits, the dues and export bills of the Company. It had alleged that the company had committed offence punishable under Section 120B, 425, 191, 192, 177, 181 as also Section 500 of the Indian Penal Code and a criminal complaint was filed before the Chief Judicial Magistrate, Vadodara by the appellant. An order was made under section 156(3) Cr.P.C. by the learned Chief Judicial Magistrate relying on the basis of the allegations made in the said complaint and by order dated 28.02.2005 directed the police authorities to investigate into the complaint. The respondent filed an application under Section 482 Cr.P.C. for quashing the complaint and the investigation on 10.05.2005 and the application came to be allowed by the impugned judgment dated 09.01.2006. The jurisdiction of the High Court to quash an FIR in exercise of its jurisdiction under Section 482 Cr.P.C. was well known. The Court may not enter into a determination of a disputed question of fact at that stage. It may, however, take note of the allegations made in the complaint petition vis a vis the conduct of the parties.

18. In **Maksud Saiyed** (supra), the Hon'ble Apex Court

observed at para 9 that an inadvertent mistake committed by the Bank in referring to the case being pending before the Debt Recovery Tribunal instead of the City Civil Court could not in their opinion give rise to a cause of action for filing a petition far less under Section 500 of the Penal Code particularly when the other particulars contained therein were not found to be incorrect. The Chief Judicial Magistrate in its order dated 28.02.2005 proceeded on the basis that the respondents were the managers and the branch managers of the Dena Bank. There was thus a total non application of mind on the part of the learned Chief Judicial Magistrate. It was further observed at paragraph 14 that throughout the complaint petition no allegation had been made as against any of the respondents that they had anything to deal with personally either in discharge of their statutory or official duty. As indicated hereinbefore in the prospectus, a bona fide mistake had been committed. The fact that such a mistake had been committed stands accepted. In any event, the statement that the matter was pending before DRT instead and place of the City Civil Court, Ahmedabad, per se, cannot be said to be defamatory as the fact that a suit was pending for recovery of the huge amount is neither denied nor disputed. Whether such a suit was maintainable and/or is ultimately to be decreed or disposed of is a question which has to be gone into in the suit itself. A criminal court cannot even take that factor into consideration.

19. **Ramchandra Venkataramanan** (supra) challenged the order passed by the Addl. Chief Metropolitan Magistrate dated 11.10.2018 in the writ petition issuing process against the petitioner under Section 500 of IPC and prayed for it to be quashed and set aside. The respondent no. 1 had lodged a complaint of defamation under Section 500 of IPC against the petitioner. In this case a learned Single Judge of this Court held at paragraph 42 that the real question which the Magistrate needs to ask himself at the time of verifying the complaint for issuance of process in the matter of defamation is whether the averments in the complaint and the statements made are capable, as a matter of law, of being defamatory. This cannot be tested subjectively. Different persons react differently to a same situation. Therefore, people have different assessments and judgments based on human nature, mindset, approach and thinking ability. At paragraph 43 it was held that a person who is in the shoes of the complainant may be balanced, or ill-tempered or sensitive or emotional and, therefore, his reaction to the written words may be different. The reaction of a reasonable person or right thinking member of the society to the words spoken or written is the litmus test of finding out whether those words amount to defamation. At paragraph 44 it was held that "whether innocuous gossip or trivial accusation will be defamation or whether casual remarks or replies on social media is defamation, etc. are the

issues that crop up before the Courts. However, a judge has to see whether serious harm is caused to the person or it has a potential ill effect on his or her reputation. In the facts at large, the statements and the words do not manifest ill-will to damage the reputation of the complainant-company but it is a denial of the actions taken by the Company and Mr. Mistry. The Judge has to be cautious while looking at the defamatory statements and has to control personification of his views about public feelings and opinion. It should be strictly a reasonable person's opinion. It is also to be kept in mind that a reasonable person is not a lawyer or a judge but a common man; a right thinking common man. Thus, the test can be objectively applied".

20. **Ramchandra** (supra) considered its earlier judgment in **Subramanian Swamy Vs. Union of India** and held at paragraph 46 that "the alleged offending words in the press note stated in it are 'motivated', 'baseless' and 'smear campaign'. Smear means damaging the reputation by false accusation. These words are required to be read in the entire context. The petitioner had made this statement with the reference to earlier disputes. The matter carries a baggage of accusations, denials, claims and disclaimer. At paragraph 48 it held that "the Court had to be guarded and should have an eye to read between the lines when the complaint of defamation is filed. To call a particular statement defamation

is subjectively easy and therefore, it is necessary to see whether the complainant is using this process of law as a weapon against the other person to settle the score or some other dues. Undoubtedly, to stand before a Criminal Court is a humiliation and a matter of extreme stress and harassment and, therefore, the Court is required to find out the real issue in such a matter especially when the parties like the complainant and the accused are fighting various business battles on various battle fields. In the factual matrix therefore, the learned Single Judge was of the view that the words used in the press note were not at all defamatory. They were moderate and temperate. They did not invite contempt, ridicule or hatred against the persons mentioned in the press note and muchless the complainant. Certain statements, if found incorrect, could be corrected without labelling them defamatory. The words used and the statement made in the press note could not be perceived as defamatory and in the circumstances, quashed the order passed by the learned Chief Metropolitan Magistrate issuing process against the petitioner”.

21. Coming to the facts of the case, the Calangute Police Station had issued a press release reading as “Mr. Antoneto Joan Assumlion D'Souza, r/o Tiwaivado, Calangute, complained that prior to 12.06.12, TNK, in the office of Goa Coastal Zone Management Authority Saligao, accused Mr.

Antonio G. Braganza and Mrs. Aldia Braganza r/o Tivaiwado, Calangute with their common intention superimposing the alteration forgery on the copy of original approval plan and submitted the same as genuine in the office of Goa Coastal Zone Management Authority, Saligao in reply to the notice issued by the Goa Coastal Zone Authority Saligao in connection to justify an illegal construction and thereby accused cheated the member of secretary Goa Coastal Zone Management Authority Saligao. Cr.No.152/12 u/s 468, 471, 420 r/w 34 IPC registered. PSI Harish Gawas is I.O.”

22. The petitioners had published the news under the caption Calangute duo booked for forgery and reading as follows:-

“ Calangute Police have registered a complaint against Antonio Braganza and Aldia Braganza for **alleged** cheating and forgery following a complaint by Antoneto Joan D'Souza, resident of Tivai Vaddo, Calangute.

According to information available, Braganza had applied for a construction license and had submitted a plan for CRZ approval and construction licenses with the authorities including Calangute Panchayat.

Following this, D'Souza filed an objection with the Goa Coastal Zone Management Authority (GCZMA) alleging that the construction was illegal as it violated CRZ regulations. When he filed his objection, he received a reply the GCZMA which included the documents filed by Antonio and Aldia

Braganza. On perusing the documents, he discovered that they were "forged documents" and accordingly informed the GCZMA and the Calangute police about it.

D'souza **alleged** that besides submitting forged documents, the duo also falsely represented themselves as Indian citizens when they were Portuguese passport holders and therefore foreign citizens.

The case has been booked under Sections 468, 471 and 420 r/w 34 IPC. "

23. A bare reading thereof would indicate that this reportage done by this publication of the report done by this petitioner was based on the FIR registered at the Calangute Police Station as per the press release indicated at page 34 of the petition. The Calangute Police had also filed a charge sheet against the respondent no.2 on the basis of this FIR which fact was not singularly disputed by the respondent no.2. Therefore, on a conjoint reading of the press release issued by the Calangute Police Station and the publication done by the petitioners, it cannot at all be heard on behalf of the respondent no.2 that the offence of defamation was made out against her, the respondent no.1 having expired in the meantime. The learned Addl. Sessions Judge on observing the reportage at paragraph 15 of her order held at paragraph 16 that this part of the reporting in her opinion was justified and the complaint produced on record did allege the offences against the respondent nos.1 and 2. At the same time, she

made an observation that there was no whisper in the complaint that the respondent nos.1 and 2 were representing themselves as Indians though there were foreign nationals. In that context, Shri De Sa, learned Advocate for the petitioners fairly conceded that the petitioners would publish in their daily that the respondent no. 1 was an Indian Citizen and as the earlier report was based on mistaken fact, the respondent no. 2 admittedly being an overseas citizen of India.

24. The complaint on its bare reading too mainly relied on the other complaints lodged against them by the said Antoneto and did not at all elaborate in what manner the offence of defamation was made out against her. There was as rightly submitted by Shri De Sa, learned Advocate for the petitioner no specific averment in the complaint as to what constituted defamation. The other issues raised by the respondent no.2 about the fate of the Anticipatory Bail Application and the related documents and the allegations against the Calangute Police Station are matters which do not count in so far as the present petitioners are concerned and hence are not necessary to be dealt with while dealing with this petition challenging the order of the learned Addl. Sessions Judge and that of the Judicial Magistrate, First Class ordering issuance of the process against the petitioners. Having considered the judgments relied upon by Shri De Sa learned Advocate for the petitioners, there is no basis in the

contention on behalf of the respondent no.2 nor was the learned Judicial Magistrate, First Class justified in holding that the article published by the petitioners was per se defamatory as to justify the issuance of process against the respondent nos.1 and 2 under Section 500 and 501 of IPC. The learned Addl. Sessions Judge was totally in error to hold that the learned Magistrate had rightly ordered the issuance of process and to dismissed the revision petition filed by the petitioners.

25. In the result, therefore, i pass the following:

O R D E R

Rule is made absolute.

The petition is allowed and the impugned orders passed by the Addl. Sessions Judge and Judicial Magistrate, First Class are quashed and set aside.

NUTAN D. SARDESSAI, J.

MF/-