

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 153 OF 2018
IN
CRIMINAL WRIT PETITION NO. 110 OF 2017

DILIP PARULEKAR., ... Applicant

Versus

TRAJANO D'MELLO AND 2 ORS., ... Respondents

Shri S. S. Kantak, Senior Advocate with Shri Abhijeet Kamat,
Advocate for the Applicant.

Shri Rohit Bras de Sa, Advocate for the Respondent No.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 5th December, 2019

P.C.:

Heard Shri S. S. Kantak, learned Senior Advocate with Shri Abhijeet Kamat, Learned Advocate for the Applicant and Shri Rohit Bras de Sa, learned Advocate for the respondent no.1.

2. It has been the contention of Shri Kantak, learned Senior Advocate that a reading of the order under correction would indicate that what was intended by the Court was to deal with the Criminal Writ Petition no.46/2017 alone and that the Court was concerned with dealing with the preliminary objections raised therein.

3. The petition came to be disposed off dealing with the preliminary objections and in view thereof, it was held that the petition would not survive. The operative part of the order indicated that the preliminary objections were allowed but there was an error to record that the petitions were dismissed.

4. In view thereof, this was a clear case which warranted correction of the order recording therein that the Writ Petition no. 46/2017 alone stood dismissed and not the Criminal Writ Petition no.110/2017 alongwith it.

5. Shri Rohit Bras de Sa, learned Advocate for the respondent no.1 submitted that a review would lie as there was no arithmetical or a clerical error by the dismissal of the petition. The application for speaking to the minutes would lie only if there was a consent between the parties and not otherwise. The applicants were seeking a revival of their petition and therefore, a review would not lie.

6. i have considered the submissions of Shri S. S. Kantak, learned Senior Advocate and Shri Rohit Bras de Sa, learned Advocate for the applicant and the respondent no.1 respectively.

7. It is a matter of record as borne out from the order under correction that it dealt with the petition under Article 226 and

227 read with section 482 Cr.P.C. challenging the order passed by the Ld. Addl. Sessions Judge, Mapusa, dated 04.10.2016. The applicants herein had raised a preliminary objection to the very maintainability of the petition and considering the same, an observation was made by this Court that the parties referred to were bound to be heard and the petitioner having failed to implead them in the petition and earlier to seek their impleadment in the revision, they were prejudiced in these proceedings. Ultimately it was held that the petition would not survive in their absence. The operative part clearly read that the preliminary objections were allowed. However, it was recorded that the petitions were dismissed with no order as to costs when it was the Criminal Writ Petition no. 46/2017 alone which was dismissed and the preliminary objections were raised on behalf of the applicants herein. There was no discussion whatsoever on the merits of the Criminal Writ Petition no.110/2017 anywhere in the body of this order and therefore, the contention of Shri de Sa, learned Advocate for the respondent cannot be entertained that what this Court intended was to dispose of both the petitions by the said order.

8. It is apparent that this is a clear case of a clerical error creeping in the order and therefore, an order of speaking to the minutes would lie and not an application for review as is his contention. Besides, no prejudice whatsoever would be caused to

the respondent if such a correction is made since there will be abundant opportunity to the respondent no.1 to meet the case of the applicant when his petition is heard which was actually not heard and decided, though the order indicated that it was a common order disposing of the petitions.

9. In view thereof, the order shall read in the operative part that the Criminal Writ Petition no.46/2017 is dismissed and not both the petitions as earlier recorded in the order. The Criminal Writ Petition no.110/2017 is restored to file to be heard on admission.

10. In view thereof, the Criminal Misc. Application stands disposed off.

NUTAN D. SARDESSAI, J.

MF/-