

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 124 OF 2018

1. Suresh Narayan Pai & anr. ... Petitioner

V e r s u s

1. Officer in charge/
Police Inspector,
Pernem Police Station,
Pernem & anr. ... Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondent no.1.

Mr. S. D. Padiyar, Advocate for the Respondent no.2.

**Coram :- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.**

Date : 10th October, 2019.

ORAL ORDER

1. By this petition, under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure (Code, for short), the petitioners are seeking quashing of FIR No.44/17 dated 06.03.2017 registered against them with P.S. Pernem and the consequent chargesheet under Sections 143, 147, 447 and 427 read with Section 149 of the Indian Penal Code (IPC, for short).

2. The petitioners are the original accused nos.1 and 3. The aforesaid FIR was registered on the basis of the complaint lodged by the second respondent on 06.03.2017. The second respondent/complainant is having a house and a shop in the property bearing survey no.102/10 of Village Arambol, Pernem. The incident is alleged to have taken place on 04.03.2017 at about 5.00 p.m. when the petitioners and the co-accused are alleged to have formed an unlawful assembly and criminally trespassed into the property of the complainant and demolished the compound wall causing loss to the complainant when the complainant was away for the festival at Kamakshi, Shiroda.

3. Upon investigation, the petitioners and the co-accused have been chargesheeted.

4. We have heard Mr. Bhobe, the learned Counsel for the petitioners, Mr. S. Rivankar, the learned Public Prosecutor for the respondent no.1 and Mr. Padiyar, the learned Counsel for the respondent no.2. With the assistance of the learned Counsel for the parties, we have gone through the record. Along with the chargesheet, there is a CD containing the footage of the CCTV recording which is enclosed.

5. Mr. Bhobe, the learned Counsel for the petitioners placed reliance on the decision of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal & Ors., 1992 Supp (1) SCC 335**. It is submitted that the present case is governed by the categories as set out in paras 102(5) and (7) of the said judgment. It is submitted that the complaint is actuated by malice and the allegations are so absurd that no prudent person can be expected to act on the same. It is submitted that even going by the complaint, the complainant was not present when the incident is alleged to have taken place.

6. Mr. Rivankar, the learned Public Prosecutor for the respondent no.1 and Mr. Padiyar, the learned Counsel for the respondent no.2, submitted that, prima facie, the allegations and the material collected during the course of the investigation are sufficient to proceed against the petitioners and the other co-accused and no case for quashing of the FIR or the chargesheet is made out.

7. We have given our anxious consideration to the rival circumstances and the submissions made. It is now well settled that the power under Section 482 of Code of Criminal Procedure or Article 226 of the Constitution of India, should be

exercised sparingly with judicial restraint and circumspection. It is further well settled that registration of an FIR is mandatory if the information given to the police discloses commission of a cognisable offence and at that stage, consideration such as genuineness and creditability of the evidence are not relevant [See **State of Telangana vs. Habib Abdullah Jeelani & Ors., (2017) 2 SCC 779**].

8. The Supreme Court in the case of **Bhajan Lal & Ors.** (supra), has culled out various categories in Para 102 in which this Court can exercise jurisdiction to quash the FIR/chargesheet. On behalf of the petitioners, reliance is placed on the categories as set out in paras 102(5) and (7) of the said judgment which read thus :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any

precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1)

(2) ...

(3) ...

(4) ...

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) ...

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Coming back to the present case, prima facie, it cannot be accepted that the present case would fall under the aforesaid categories. Admittedly, there is previous enmity between the parties. It cannot be accepted that the allegations in the FIR or complaint are absurd or inherently improbable or that the prosecution is manifestly attended with malafides and

is instituted with ulterior motive to wreak vengeance or is an outcome of a private and personal grudge. This is not the stage where correctness of the allegations can be gone into or the prosecution evidence can be appreciated which can only be done at the trial. [See **Kamal Shivaji Pokarnekar vs. State of Maharashtra, 2019 AIR SC 847**].

10. We would hasten to add that the observations herein are only for the limited purpose of examining the plea for quashing of the proceedings and it is for the Trial Court to consider the prosecution case and the material produced in support thereof at the time of framing charge and the trial, if any, on its own merits, without being influenced by the aforesaid observations.

11. The petition is without any merit and is accordingly dismissed.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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