

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 196 OF 2019**

Mrs. Ameena alias Amina Abdulla Makandar,
wife of late Mr. Abdulla Budesab Makandar,
aged 47 years, housewife,
married, Indian National,
r/o H.No.LIG 348, Gogol Housing Board,
Margao Goa, represented herein by
Power of Attorney holder her son
Mr. Mehboobsab Abdulla Makandar,
Son of late Mr. Abdulla B. Makandar,
aged 27 years, business, unmarried,
Resident of H.No.LIG 348,
Gogol Housing Board,
Margao Goa.

... Petitioner

Versus

1. State of Goa,
Through Public Prosecutor,
High Court, Altinho,
Panaji Goa.
2. The Police Inspector,
Margao Town Police Station,
Margao Goa.
3. M/s Sanskriti Constructions Pvt. Ltd.,
A company incorporated under
the Indian Companies Act, 1956,
having their registered office at B-18,
Cosy Apartment, Plot No.20, Sector 9,
Rohini, Delhi 110085.

... Respondents

Mr. Krishna M. N. Dessai, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Addl. Public Prosecutor for Respondent Nos.1 & 2.

Mr. Ajit R. Kantak, Advocate for Respondent No.3.

**Coram:- M. S. SONAK &
C. V. BHADANG, JJ.**

Date:- 14th November, 2019

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Mr. Krishna Dessai, learned counsel for the Petitioner, Mr. Faldessai, learned Addl. Public Prosecutor for Respondent Nos.1 and 2 and Mr. A. Kantak, learned counsel for Respondent No.3.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.

3. The learned counsel appearing for the respective Respondents waive service.

4. By this petition, the Petitioner who is the wife of late Abdulla Budesab Makandar seeks quashing of FIR No.86/2019 dated 20th May, 2019 registered by the Margao Town Police Station alleging that the proprietor of M/s Taj Constructions has committed offences under Sections

447 and 420 of the Indian Penal Code.

5. Mr. Dessai, learned counsel for the Petitioner submits that M/s Taj Constructions against whom the FIR is lodged is the proprietary concern of late Abdulla Budesab Makandar. He submits that consequent upon expiry of the sole proprietor, no prosecution can proceed against his wife or in that matter other legal heirs for any offences alleged to have been committed by the late proprietor. He submits that on this ground alone the FIR is liable to be quashed.

6. Mr. Dessai further submits that in any case the complaint dated 25th April, 2019 filed by the Respondent No.3 herein, which is the basis for the impugned FIR, discloses the commission of no criminal offence even against the late proprietor Abdulla Budesab Makandar. He points out that the dispute has essentially a civil profile and therefore, invoking the provisions of the criminal law machinery amounts to an abuse of process of Court. On this additional ground as well Mr. Dessai submits that the impugned FIR deserves to be quashed.

7. Mr. Faldessai, learned Addl. Public Prosecutor submits that there is no good ground made out for quashing the FIR and the entire material on record is to be considered. He submits that the involvement of some of the legal representatives cannot be ruled out. He submits that the

material like sale deed submitted by the legal representatives is not required to be taken into consideration at this stage. He therefore, submits that this petition may be dismissed.

8. Mr. Kantak, learned counsel for Respondent No.3 on the basis of whose complaint the FIR has been registered also urges that this petition deserves to be dismissed. At the outset, he points out that the complaint dated 25th April, 2019 itself makes a reference to the son of late Abdulla Budesab Makandar who was carrying out unauthorised construction activity at site. Mr. Kantak then refers us to the various Memoranda of Understandings (MOUs) placed on record which according to him, spell out the nature of financial transaction between the parties. He points out that the sale deed dated 15th December, 2016 against which a reliance was placed by the wife of late Abdulla Budesab Makandar has been executed by one Nikhil Rajesh Yadav on the basis of resolution which is totally fabricated. He submits that Nikhil Rajesh Yadav had no authority whatsoever to act on behalf of the Respondent No.3 and therefore, a fraud has been played in the matter. For all these reasons, Mr. Kantak submits that there is no case made out to quash the FIR.

9. Mr. Kantak thereafter refers to an additional complaint dated 20th August, 2019, made by the Respondent No.3 in which the allegation of trespass has been made against the son of late Abdulla Budesab

Makandar. He submits that on the basis of this complaint and material produced on record, the case is made out for filing supplementary charge-sheet. For all these reasons, Mr. Kantak submits that this petition may be dismissed.

10. The rival contentions now fall for our determination.

11. The complaint dated 25th April, 2019, at the highest indicates that the Respondent No.3 was the owner of the property which, it appears, is the bone of contention between the Respondent No.3 and proprietary concern of M/s Taj Constructions. A Memorandum of Understanding was entered into between the parties for sale of said property for consideration of Rs.2.30 lakhs. It was further revised to Rs.1.40 lakhs. The complaint states that certain amounts were actually paid to the Respondent No.3 but the balance consideration of Rs.90 lakhs was not paid by M/s Taj Constructions. It is the case of Respondent No.3 that since the balance consideration was not paid within the stipulated period as agreed in the Memorandum of Understanding, the Memorandum of Understanding has become null and void. The complaint then adds that when representatives of the Respondent No.3 proceeded at the site of the property in question, they noticed that some construction was going on and on inquiries they met the son of Abdulla Budesab Makandar who was carrying out unauthorised construction activities.

12. The complaint ends with a request to the police authorities to take necessary action to stop all illegal activities on the plot and not to allow any unauthorized person to trespass in the property without their permission.

13. Now the material placed on record by the parties themselves refer to the registered sale deed dated 15th December, 2016 which is purported to have been executed by the Respondent No.3 through its alleged signatory Nikhil Rajesh Yadav. The registered sale deed also makes a reference to the company resolution as well. It is pertinent to note that there is no reference to all this material in the complaint on the basis of which the impugned FIR came to be lodged.

14. However, it is now the case of Respondent No.3 that the registered sale deed is itself a fabricated since Nikhil Rajesh Yadav was not at all authorized to execute the same on behalf of the Respondent No.3. It is pertinent to note that the FIR makes no reference to this aspect of registered sale deed or alleged incompetence of Nikhil Rajesh Yadav to execute such sale deed on behalf of Respondent No.3 company.

15. Upon perusal of the complaint made by the Respondent No.3 as also all other material produced by the Respondent No.3, which includes an affidavit in reply filed by the Respondent No.3 in this matter, we are

more than satisfied that the entire dispute has predominantly a civil profile. The Respondent No.3, seems to be bent upon using the police machinery in order to settle predominantly a civil dispute which appears to have arisen between the parties. Mr. Kantak also pointed out that the son of late proprietor of M/s Taj Constructions has approached the Respondent No.3 with a revised proposal. He clarifies that such approach was before the complaint lodged. If this is true, then, it strengthens the case of the Petitioner that the complaint was filed only in order to settle a dispute which has predominantly a civil profile.

16. The complaint, as we have noticed earlier, failed to make out a case of commission of any criminal offence as such against the proprietor of M/s Taj Constructions. The reference to the son is only in the passing. In any case, now that the sole proprietor of M/s Taj Constructions has already expired. We fail to appreciate as to how the prosecution, on the basis of the very same FIR can be proceeded either against the wife or late proprietor or legal representatives of the late proprietor. In addition to the circumstance that the dispute has predominantly a civil profile, even this is an additional reason to quash the FIR in question.

17. We note that at least for the present, there are no clear allegations either against the wife of late proprietor or legal representatives of late proprietor. On the basis of the material placed on record, there is no

case made out to sustain the FIR or to permit the police authorities to proceed against the wife of late proprietor or legal representatives of late proprietor on the basis of such FIR. In case, there are any subsequent developments on the basis of which the Respondent No.3 is in a position to make out a case having some criminal element, the matter can be considered independently by the authorities. However, for the present, based upon the material produced on record, we are satisfied that the very registration of the FIR amounts to abuse of process of Court since the dispute between the parties has predominantly a civil profile. Besides, as noted earlier, the additional reason for quashing of this FIR is that the FIR pertains to sole proprietor of M/s Taj Constructions, who has since expired.

18. For the aforesaid reasons, we quash the FIR No.86/2019 dated 20th May, 2019 registered by the Margao Town Police Station under Sections 447 and 420 of the Indian Penal Code. The rule in this petition is made absolute in terms of prayer clause (a).

19. In the facts of the present case, there shall be no order as to costs.

20. At the request of Mr. Kantak, we however clarify that none of the observations in this judgment and order will in any manner prejudice any of the parties, including in particular the Respondent no.3 in the

prosecution of civil suit which the Respondent No.3 proposes to institute in the matter.

C. V. BHADANG, J.

M. S. SONAK, J.

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