

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NOS. 246, 247, 248 AND 249 OF 2019
WITH
STAMP NUMBER MAIN NOS. 2992, 2996, 2997 AND 2998 OF 2019
CRIMINAL WRIT PETITION NO.246 OF 2019

Shri Madu @ Mahadev Gaonkar,
Major of age, s/o. Late Mahadev
Gaonkar, r/o. H. No.467,
Davkond, Dharbandora, Goa. ... Petitioner

V e r s u s

1. State
(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.
2. Shri Ramakant Gaonkar,
Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa. ... Respondents

WITH
CRIMINAL WRIT PETITION NO.247 OF 2019

1. Shri Chandrakant Shankar
Gaonkar, Major of age,
s/o. Late Shankar Velip,
2. Smt. Chandrakala C. Gaonkar,
W/o Chandrakant Shankar

Gaonkar, Both r/o. H. No.
486, Davkond, Dharbandora,
Goa.

... Petitioners

V e r s u s

1. State
(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.

2. Shri Ramakant Gaonkar,
Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa.

... Respondents

CRIMINAL WRIT PETITION NO.248 OF 2019

Shri Sadanand Surya Velip,
Major of age, s/o. Late Surya
Velip, r/o. H. No.249, Davkond,
Dharbandora, Goa.

... Petitioner

V e r s u s

1. State
(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.

2. Shri Ramakant Gaonkar,
Major of age,
s/o Late Shri Tilu Gaonkar,

H. No.720, Santona Coli,
Dharbandora, Goa.

... Respondents

CRIMINAL WRIT PETITION NO.249 OF 2019

1. Shri Vasant Arjun Gaonkar,
Major of age, s/o. Late Arjun
Mono Gaonkar, r/o. H. No.
201, Davkond, Dharbandora,
Goa.

2. Sugandha Vasant Gaonkar,
Major of age, W/o Vasant
Arjun r/o. H. No.201,
Davkond, Dharbandora,
Goa.

... Petitioners

V e r s u s

1. State
(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.

2. Shri Ramakant Gaonkar,
Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa.

... Respondents

WITH
STAMP NUMBER MAIN NO. 2992 OF 2019

Chamba Sadanand Gaonkar

... Petitioner

V e r s u s

1. State
(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.
2. Shri Ramakant Gaonkar,
Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa. ... Respondents

STAMP NUMBER MAIN NO. 2996 OF 2019

Ganesh Shivaram Gaonkar ... Petitioner

V e r s u s

1. State
(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.
2. Shri Ramakant Gaonkar,
Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa. ... Respondents

STAMP NUMBER MAIN NO. 2997 OF 2019

Gopal Bombiyo Gaonkar

... Petitioner

V e r s u s

1. State

(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.

2. Shri Ramakant Gaonkar,

Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa.

... Respondents

STAMP NUMBER MAIN NO. 2998 OF 2019

Mahesh Shivaram Gaonkar

... Petitioner

V e r s u s

1. State

(through Police Inspector)
Collem Police Station,
Collem, Dharbandora,
Goa.

2. Shri Ramakant Gaonkar,

Major of age,
s/o Late Shri Tilu Gaonkar,
H. No.720, Santona Coli,
Dharbandora, Goa.

... Respondents

Mr. Anthony D'Silva, Advocate for the Petitioners.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondent no.1.

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

Date : **28th November, 2019.**

ORAL ORDER (*Per M. S. Sonak, J*)

1. Heard Mr. Anthony D'Silva, learned Counsel for the petitioners and Mr. Pravin Faldessai, learned Additional Public Prosecutor for the respondent no.1-State.

2. The Criminal Writ Petitions STM Nos. 2992, 2996, 2997 and 2998 of 2019 are not on board. However, at the request of the learned Counsel, they are taken on board.

3. The learned Counsel for the parties agree that common issues arise in all these matters and, therefore, they may be disposed off by a common order.

4. In fact, we note that the FIR/Complaint in all these cases is common and, therefore, it would be appropriate that all these matters are taken up for consideration together and disposed off by a common order.

5. Mr. Silva, the learned Counsel for the petitioners submit that the petitioners are the agricultural tenants in respect of the property in question. He points out that there is a civil dispute already pending between the parties. He submits that the dispute between the parties is essentially of a civil nature but the complainant, by abusing the process, has attempted to give this dispute some criminal flavour. He submits that the allegations in the complaint make out no case of any cognizable offence. He submits that even the complainant alleges that the police had arrived at the site. He submits that if this is so, then it is inconceivable that the police should not themselves record a FIR or take any action in the matter. He submits that the fact that this is not been done indicates that the complaint is totally false

and has been lodged only in order to harass the petitioners. He submits that all these are good grounds to quash the FIR dated 23.03.2019. He relies upon the decision of the Hon'ble Supreme Court in the case of *Prof R. K. Vijayasathya & anr. vs. Sudha Seetharam & anr.* CDJ 2019 SC 174, in support of his contentions.

6. Mr. Faldessai, the learned Additional Public Prosecutor, submits on the perusal on the complaint that it is apparent that a case of cognizable offence has been made out against the petitioners. He submits that the scope of interference with the FIR in such matters is extremely limited and even the powers under Section 482 of The Code of Criminal Procedure (Cr.P.C.) are to be exercised sparingly and in exceptional circumstances. For all these reasons, he submits that these petitions may be dismissed.

7. We have perused the complaint/FIR which is challenged in these petitions. There are allegations in the complaint, that the

petitioners, in large numbers, armed with dandas, coitas and in rage started abusing the complainant and his family members. There are allegations that the petitioners threatened the complainant and his family members with dire consequences including threat to kill and bury them in the property itself. There are allegations that the petitioners forcibly and dishonestly collected about 200 coconuts from the property which were plucked by use of force and dishonestly took away some, thereby committing theft. There are allegations about criminal trespass. Thus, from the perusal of the complaint which has led the institution of the FIR, it cannot be said that the ingredients to constitute criminal offences are not made out. At this stage, it is not possible to go into the issue as to whether such allegations are true or not. That is a matter of trial. However, it will not be correct to say that the allegations in the complaint/FIR, even if take at face value, do not disclose the commission of any cognizable offence.

8. In fact, in the case of *Prof R. K. Vijayasathy* (supra), the Hon'ble Supreme Court has held that the jurisdiction under Section 482 of Cr.P.C. has to be exercised with care. The complaint/FIR can be quashed at the very threshold where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint. This is one of the instances of abuse of the process of the Court referred to by the Hon'ble Supreme Court in the said decision.

9. It is possible that there are civil disputes between the parties. However, that by itself is no ground to conclude that the matter which is essentially of a civil nature has been given a cloak of a criminal offence. Even the contention based upon police presence at the site, does not lead to inference that the allegations in the complaint are totally false or that the institution of the complaint constitutes abuse of the process of the Court. All these matters are to be determined at the course of the trial.

10. Taking into consideration the legal position, that powers under Section 482 of the Cr.P.C. are to be sparingly exercised and that too in exceptional circumstances, we are satisfied that no case has been made out to quash the FIR in the peculiar facts and circumstances of the case.

11. We, however clarify, that our observations are in the limited context of examining whether any case is made out to quash the FIR at the threshold. Therefore, such observation should not be considered in the course of the trial so as to prejudice the defence of the petitioners.

12. With the aforesaid observations, we dismiss these petitions. There shall be no order as to costs.

C. V. BHADANG, J.

M. S. SONAK, J.

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