

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.224 OF 2018

1) Sushant Singh Kushwaha,
son of Chandrashekhar Kushwaha,
aged 30 years, Indian National,
occupation business, and his wife;

2) Smt. Kavita Sushant Singh Kushwaha,
wife of Sushant Kushwaha,
26 years of age, housewife,
both resident of House No.248,
Near Petrol Pump,
Malpem, Pernem Taluka, Goa.

..... Petitioners.

Versus

1) Police Incharge,
Pernem Police Station,
Pernem, Goa.

2) Town and Country Planning
Department of Pernem Taluka,
through their Dy. Town Planner,
having their office at
Pernem, Goa.

(3) Public Prosecutor,
High Court Complex,
Panaji, Goa.) ... deleted

..... Respondents.

Mr. Arjun Naik, with Ms. Mehendi Naik Desai, Advocates for the
Petitioners.

Mr. S. R Rivankar, Public Prosecutor for Respondent No.1.

Mr. Pravin Faldessai, Additional Public Prosecutor for Respondent No.2.

***Coram : S.C. Gupte &
Nutan D. Sardesai, JJ.***

Date : 10th June, 2019.

ORAL JUDGMENT: (Per S.C. Gupte, J.)

1. Heard learned Counsel for the Petitioners and learned Public Prosecutors.
2. Rule. Taken up for hearing forthwith by consent of Counsel.
3. This Petition challenges the prosecution of Criminal Case No.AOA/85/2018, pending before the Judicial Magistrate, First Class, at Pernem. The criminal case appears to be the result of FIR No.192/2017, registered by Respondent No.1 Pernem Police Station. The Respondents have already filed a Charge Sheet bearing Charge Sheet No.56/2018, alleging an offence under Section 17A of the Goa Town and Country Planning Act (the “Act”), against the Petitioners.
4. Section 17A of the Act prohibits cutting of any hilly land and filling up of any low lying land, etc. and makes the acts as an offence. Section 124 of the Act requires that no prosecution for any offence punishable under the Act can be instituted, except with the

previous sanction of the Government or the Planning and Development Authority concerned, or any officer authorised by the Government or such Planning and Development Authority in that behalf. Learned Additional Public Prosecutor, who appears on behalf of Respondent No.2, confirms that there is no previous sanction of the Government or the Planning and Development Authority, or any Officer of the Government or the Planning Authority, as the case may be, for prosecution of the alleged offence of the Petitioner under Section 17A of the Act. Since, admittedly, there is no previous sanction, the prosecution has been wrongly instituted and cannot go through.

5. Criminal Case No.AOA/85/2018, pending before the Judicial Magistrate, First Class, at Pernem is, accordingly, quashed and set aside. It is, however, made clear that this Court has not applied its mind to the merits of the case. The State is free, if it may so choose, to consider whether or not to prosecute the Petitioners for the alleged offence after seeking a previous sanction under Section 124 of the Act.

6. The Petition is disposed of accordingly.

Nutan D. Sardesai, J.

S.C. Gupte, J.

