

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 34 OF 2018

Suresh Pai

... Petitioner

V e r s u s

State of Goa through the
Police Inspector, Pernem Police Station,
Pernem & 2 Ors.

... Respondents

Mr. Pavithran AV, Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondent nos.1
and 2.

Mr. S. D. Padiyar, Advocate for the Respondent no.3.

**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 Priocedure (Code, for short), the petitioner is seeking quashing of FIR No.55/17 dated 29.03.2017 registered against the petitioner with P.S. Pernem, under Sections 341, 323 and 427 of the Indian Penal Code (IPC, for short). The said FIR is registered on the basis of a complaint lodged by the third respondent.

2. As per the complaint lodged by the third respondent, the incident occurred on 29.03.2017 at 17.35 hours. It is alleged that when the third respondent was proceeding from Deulwada, Arambol, to his residence on his motorcycle bearing no.GA-03/B-4176, the petitioner assaulted him with a wooden object on his face. As a result of the assault, the third respondent fell down from the motorcycle damaging his spectacles and in the incident, it is also alleged that he lost cash of Rs.10,000/- which he was carrying.

3. On the basis of a complaint lodged by the third respondent, the impugned FIR came to be registered on 29.03.2017 at 21.00 hours and upon investigation, a chargesheet is filed before the learned JMFC, at Pernem.

4. We have heard Mr. Pavithran, the learned Counsel for the petitioner, Mr. Rivankar, the learned Public Prosecutor for the respondent nos.1 and 2 and Mr. Padiyar, the learned Counsel for the third respondent. With the assistance of the learned Counsel for the parties, we have perused the record.

5. Mr. Pavithran, the learned Counsel for the petitioner submitted that there is a long standing dispute between the petitioner and the third respondent which has given rise to a

false and fabricated complaint by the third respondent against the petitioner. It is submitted that the petitioner was not aware of the lodging of the complaint or about the consequent investigation carried out. It is submitted that the petitioner for the first time came to know of the complaint and the consequent chargesheet, when a summons from the Court was received. It is submitted that the Investigating Officer was required to furnish a copy of the FIR to the petitioner before proceeding with the investigation and in the absence thereof, the investigation and the consequent chargesheet filed, stands vitiated. Secondly, it is submitted that the petitioner is aged about 70 years and the allegations of the assault attributed to the petitioner are absurd and highly improbable. The learned Counsel pointed out that the incident is alleged to have happened on a public road at about 17.35 hours and thus there ought to be independent witnesses if at all the incident as alleged had occurred. It is submitted that the entire investigation is tainted as the complaint is filed to wreak vengeance and thus, the prosecution is attended with malice. It is submitted that the investigation and the consequent chargesheet is in flagrant abuse of the process of the Court. On behalf of the petitioner, reliance is placed on the decision of the Orissa High Court in **Arun Kumar Budhia vs. State of Orissa & anr., 2013 Cri. L. J. 616**, in order to submit that the failure to furnish copy of

the FIR would vitiate the investigation and the consequent chargesheet. The learned Counsel has placed reliance on the decision of the 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 would be covered by Paras 102(5) and (7) of the said judgment. The learned Counsel has strenuously urged that this is a case where the FIR and the investigation is actuated by malice and vengeance which is attributable to the long standing dispute between the petitioner and the third respondent and therefore this Court should exercise jurisdiction to quash the proceedings.

6. On the contrary, on behalf of the respondents, reliance is placed on the decision of the Supreme Court in the case of **State of Telangana vs. Habib Abdullah Jeelani & Ors., (2017) 2 SCC 779** and **Kamal Shivaji Pokarnekar vs. State of Maharashtra, 2019 AIR SC 847**. It is submitted that prima facie, at this stage, the allegations of the assault are corroborated by medical evidence and this is not the stage when the Court can appreciate the prosecution evidence which can essentially be done at the trial. It is submitted that the power under Section 482 of the Code and for the matter of that under Article 226 of the Constitution of India, to quash an FIR/chargesheet ought to be exercised sparingly with restraint

and circumspection. It is submitted that the registration of a FIR is mandatory, if the information given to the police discloses commission of a cognizable offence. It is submitted that there is no requirement of the Investigating Officer supplying the copy of the FIR to the accused and, in any event, it is not shown that failure to supply a copy of the FIR would vitiate the investigation and the consequent prosecution.

7. We have carefully considered the rival circumstances and the submissions made. It is now well settled that although this Court has wide powers to quash a FIR/prosecution, such a power has to be exercised sparingly and with circumspection. The correctness or otherwise of the allegations made by the prosecution cannot be gone into at this stage, which has essentially to be done at the stage of the trial.

8. The Supreme Court in the case of **Bhajan Lal & Ors.** (supra) has culled out various categories where this Court would be justified in quashing the prosecution. In particular it is claimed on behalf of the petitioner that the present case falls under 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 appears that the third respondent is alleging an assault by the petitioner on the date of the incident at about 17.35 hours when he was proceeding on his motorcycle from Deulwada, Arambol to his residence. It appears that the petitioner was referred for medical examination. A perusal of the hurt certificate shows that there were abrasions found on the left cheek, left nasal region and left leg of the petitioner. Thus, atleast, prima facie, it is not possible to accept that the allegations made in the FIR or complaint are so absurd or 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. Prima facie, it is also not possible to accept that the prosecution is manifestly attended with malafide or is maliciously instituted by wreaking vengeance on account of private and personal grudge. It is not possible to accept that the present case falls under the categories as envisaged by paras 102(5) and (7) of the judgment in the case of **Bhajan Lal & Ors.** (supra). We would hasten to add that these observations are only for the

limited purpose of examining the plea for quashing of proceedings and it is for the Trial Court to consider the prosecution case and the material produced in support at the time of framing of charge and the trial on its own merits without being influenced by the observations herein.

10. The reliance placed on the decision of the Supreme Court in the case of **Arun Kumar Budhia** (supra), in our opinion, is misplaced. That was a case where the petitioner had sought for a writ of mandamus directing the State Government to supply copy of FIR registered by the police to the accused persons and/or the relatives and to direct the police to upload the FIRs on their website within a reasonable time after registration. It was in this context that the Court gave certain directions holding that the accused is entitled to get the copy of the FIR at an earlier stage than as prescribed under Section 207 of the Code. As rightly contended on behalf of the respondents, it is not shown that the failure to furnish such copy would vitiate the entire investigation and the consequent prosecution. We are, prima facie, of the opinion that if the allegations made in the complaint are corroborated by medical evidence or ocular evidence, in a given case, the mere non-furnishing of the copy of the FIR cannot result into the investigation or the prosecution being vitiated. It is

evident that the correctness or otherwise of the allegations cannot be gone into and/or at this stage it can only be done at the trial.

11. In the result, the petition is without any merit and is accordingly dismissed.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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