

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 20 OF 2020

EDNA MENDANHA AND ANR., ... Petitioners

Versus

STATE, THR. PUBLIC PROSECUTOR., ... Respondent

Shri Menino Teles, Advocate for the petitioners.

Shri Gaurish Nagvenker, Additional Public Prosecutor for the respondent.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 6th March, 2020

ORAL ORDER:

Heard Shri M. Teles, learned Advocate for the petitioners and Shri Gaurish Nagvenker, learned Additional Public Prosecutor for the respondent.

2. It was the contention of Shri Teles, learned Advocate that the charge was framed by the learned J.M.F.C. under Sections 504, 506(ii) and 324 IPC on the basis of the chargesheet filed under Sections 504, 506(ii) and 324 r/w. 34 IPC. The matter was taken in challenge before the Sessions Court which ordered charge to be framed only under Sections 504 and 506(ii) IPC. It was the contention of Shri Teles, learned Advocate that the only basis to file the chargesheet was the complaint and no other. It

was his contention that the complaint on the face of it was inadequate to frame the charge against the petitioners inasmuch as there was no date, time and place of the offence mentioned in the complainant which was apparently lodged on 14/06/2017 with a back date as 07/06/2017 and registered on 14/06/2017. The scene of offence was drawn on 14/06/2017 and a record was made of the scene of offence at Duler which was not earlier disclosed in the complaint.

3. He also referred to the supplementary statement of the complainant where there was no reference to the date of the incident. There were also no eye witnesses to the incident and the police had unnecessarily acted with expedition to register an offence against him acting on the basis of the incident exerted by the complainant. There was a serious doubt on the scene of crime and the complaint filed by the respondent was in retaliation of the complaint earlier filed by the petitioners against the respondent.

4. In view thereof, the charge ordered to be framed even by the learned Additional Sessions Judge had to be quashed and set aside. It was the contention of the learned Additional Public Prosecutor that the entire incident had not to be evaluated at the stage of framing of charge but a prima facie consideration thereof. The Court had considered the complaint, the

supplementary statement and also the Panchnama and on that basis had proceeded to frame the charge. There was no warrant for an interference with the impugned order and therefore the petition had to be dismissed. It was also his contention that since the complaint of the petitioners too was registered it was apparent that there was no malafide or inaction at the instance of the police and therefore also on that count the petition was liable for dismissal. Lastly, it was his contention that all the discrepancies pointed out on behalf of the petitioners had to be looked into on the merits of the case during trial and not at this stage.

5. i have heard the learned Advocate for the petitioners and the learned Additional Public Prosecutor on behalf of the State and beside perused the impugned order passed by the learned Additional Sessions Judge. Besides, i have also perused the complaint lodged by the respondent from which it is apparent that a reference has been made to the incident of abuses and threats issued by the petitioners and pressing for action against them. However, as rightly pointed out by Shri Teles, learned Advocate for the petitioners, there is no reference to the date, time and place of the alleged incident when the threats and abuses were given by the petitioners to the complainant. Even otherwise it is worth reckoning that though the complaint is dated 07/06/2017, the offence came to be registered only on

14/06/2017 and to all purposes and effects it was a backdated complaint as rightly submitted by Shri Teles, learned Advocate for the petitioners. The supplementary statement too for the first time makes a reference to the incident prior to 07/06/2017 and the place being near Landmark Elite Residency where the petitioners are supposed to have acted irresponsibly by throwing boiling water at the complainant and abusing him with bad words and threatening to kill him. But then again the supplementary statement is not in consonance with the complaint earlier lodged on behalf of the respondent.

6. The scene of offence Panchnama is apparently conducted at a place near Landmark Elite Residency behind Duler petrol pump which does not refer to the spot as indicated in the complaint or rather it must be said that the complaint is totally silent on the spot of the incident which had purportedly taken place at the instance of the petitioner. Moreover, another interesting aspect of the matter is that on the complainant's own statement there were no witnesses to the offence purportedly committed by the petitioners and that the possibility of the complaint being lodged against the petitioners as a retaliation to the complaint lodged by the petitioners cannot be ruled out as remote. Besides, what exactly were the threats given by the petitioners had not been spelt out on behalf of the respondent/complainant and even otherwise the complaint is

vague insofar as the abuses are concerned. The learned Addl. Sessions Court could not have proceeded to frame charge against the petitioners on these grounds which were vague in themselves. This is a fit case to exercise the jurisdiction of this Court and interfere with the order passed by the learned Additional Sessions Judge.

7. In view thereof, the petition is allowed. The impugned order passed by the Additional Sessions Judge is quashed and set aside.

NUTAN D. SARDESSAI, J.

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