

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.18 OF 2020***

Suzie Vaz and another. Petitioners.

Versus

State of Goa and others. Respondents.

Mr. Rajeev Lochan, Advocate for the Petitioners.

Mr. Gaurish Nagvenkar, Additional Public Prosecutor for the Respondents No.1 and 2.

Respondent No.3 in person.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 17th February, 2020.

P.C. :

Heard Mr. Rajeev Lochan for the Petitioners, Mr. Gaurish Nagvenkar, learned Additional Public Prosecutor for the Respondents No.1 and 2 and Respondent No.3, who is present in person.

2. This Petition seeks quashing of two FIRs registered against the Petitioners. The basic ground is that the Petitioners are innocent and despite their innocence, they are facing criminal prosecution since last almost 7 years from the date of record of the two FIRs. Mr. Lochan has placed on record Roznamas in Criminal Case No. 256/S/2016/C and Criminal Case No.IPC/256/2014/D, pending

before the Courts of Judicial Magistrate, First Class 'C' Court and Judicial Magistrate, First Class 'D' Court, both at Mapusa, Bardez, Goa.

3. According to us, on the basis of the contention that the Petitioners are innocent, the FIRs cannot be quashed. Upon perusal of the FIRs, it cannot be said that no commission of any offence is disclosed. However, Mr. Lochan, learned Counsel for the Petitioners is quite right in his submission that right to speedy trial, is also a fundamental right.

4. From the perusal of the Roznamas in the two matters, it appears that the Charge-sheets have been filed against several accused persons. Further, there is difficulty in appearance of some of the accused persons, who are, probably, absconding. The Roznamas indicate that Section 299 Cr.P.C. procedure may have been adopted. However, there is no clarity on this issue.

5. Section 299 of Cr.P.C. reads as follows :

“299. Record of evidence in absence of accused.

(1) *If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try , or commit for trial] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the*

offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

6. Similarly, Section 317 of Cr.P.C., which deals with the provision for inquiries and trial being held in the absence of accused in certain cases, reads as follows :

“317. Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons

to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

7. According to us, the Trial Courts taking up the aforesaid two criminal cases, must explore the possibility of proceeding under Sections 299 and 317 of Cr.P.C., so that the trial of the accused persons, which includes the Petitioners who are attending the Courts on regular basis, is not unduly delayed.

8. Accordingly, we direct the Trial Courts to expedite the proceedings in Criminal Case No. 256/S/2016/C and Criminal Case No. IPC/256/2014/D, pending before the Courts of Judicial Magistrate, First Class 'C' Court and Judicial Magistrate, First Class 'D' Court at Mapusa, Bardez, Goa and endeavour to conclude the same within a period of six months from the date of an authenticated copy of this order is placed before them.

9. According to us, this is the maximum relief that we can grant to the Petitioners, at this stage. The Petitioners are granted liberty to place an authenticated copy of this order before the Trial Courts, on the next date fixed by the Trial Courts. Further, we direct even the Petitioners to co-operate in expeditious conclusion of the trial.

10. The Petition stands disposed of. No order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.