

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 226 OF 2020**

1 M/s Chase Security Services,
a proprietary concern,
having office at Shop No.G-2,
Ground Floor, Pereira Arcade,
Raia, Salcete, Goa,
through its proprietor
Shri. Ravindra Prabhakar Sawant,
son of Shri. Prabhakar Gajanan Sawant,
aged about 44 years,
business, Indian National, resident of
H. No.259/B, Kulsabhath, Naqualim,
Camurlim, Salcete, Goa.

2 Shri Ravindra Prabhakar Sawant,
son of Shri. Prabhakar Gajanan Sawant,
aged about 44 years, business,
Indian National, resident of
H. No.259/B, Kulsabhath, Naqualim,
Camurlim, Salcete, Goa.

.... Petitioners.

Versus

1 State of Goa,
Through the Chief Secretary,
Government of Goa, Goa Secretariat,
Alto Porvorim, Bardez, Goa-403521.

2 Chief Secretary,
Government of Goa, Goa Secretariat,
Alto Porvorim, Bardez, Goa-403521.

3 The Controlling Authority,
Additional Secretary (Home),
Government of Goa, Goa Secretariat,
Alto Porvorim, Bardez, Goa-403521. Respondents.

Mr. Surendra G. Desai, Senior Advocate with Mr. Shirin V. Naik, Advocate for the Petitioners.

Mr. Devidas J. Pangam, Advocate General with Ms. Maria S. J. Correia, Additional Government Advocate for the Respondents.

**Coram : M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.**

Date : 11th March, 2020.

Oral Judgment: (Per M. S. Sonak, J.)

Heard Mr. Surendra G. Desai, learned Senior Advocate alongwith Shri Shirin V. Naik, learned Counsel for the Petitioners and Mr. Devidas J. Pangam, learned Advocate General alongwith Ms. Maria S.J. Correia, for the Respondents.

2. Rule. Rule is made returnable forthwith at the request of and at the consent of the learned Counsel for the parties.

3. The Petitioners challenge the orders made by the

Additional Secretary (Home) and the Chief Secretary, both Licencing and Appellate Authority under the provisions of The Private Security Agencies (Regulation) Act, 2005, (the said Act) declining the Petitioners licence to operate a Private Security Agency, as contemplated by the said Act.

5. The rejection of the licence is on the sole ground that the case of the Petitioners is covered under the provisions of Section 6(1) (b) of the said Act.

6. Section 6(1)(b) reads as follows:

“6. Persons not eligible for licence.- (1) A person shall not be considered for issue of a licence under this Act, if he has been--

(a).....

(b) convicted by a competent court for an offense, the prescribed punishment for which is imprisonment of not less than two years; or

(c).....

(d).....

(2)”

[Emphasis supplied]

7. The record indicates that the Petitioners were involved in criminal case bearing Crime No. 12/2012 under Sections 325, 504 r/w 34 of I.P.C, which case was compounded on 21.06.2012 and

criminal case bearing Crime No. 95/2004 under Sections 341, 353 r/w with 34 of I.P.C and in respect of this case, the Petitioners were convicted by the Judicial Magistrate First Class at Margao vide Judgment and Order dated 28.04.2008. The Petitioners were sentenced to pay fine of ₹2000/- and in default to undergo simple imprisonment for a period of two weeks and two days respectively, as indicated in the operative portion of the Order.

8. In the aforesaid undisputed circumstances, the question which arises for determination is whether the Petitioners were indeed convicted by a competent court for an offence, '*the prescribed punishment for which is imprisonment of not less than two years.*'

9. Section 341 of the I.P.C. reads as follows:

“341. Punishment for wrongful restraint. —
Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”

10. From the aforesaid it is quite clear that the offence under Section 341 of I.P.C. cannot be regarded to be an offence, the prescribed punishment for which, is imprisonment of not less than two years.

11. Section 353 of the I.P.C. reads as follows:

“353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

[Emphasis supplied]

12. From the aforesaid it is clear that the offence under Section 353 of the I.P.C. is one, for which, the legislature has prescribed imprisonment of either description for a term which may extend to two years, or with fine or with both.

13. Further question which arises for determination is whether the punishment for a term which may extend to two years can be regarded as punishment of imprisonment 'of not less than two years' because, this is a precise expression used under Section 6(1)(b) of the said Act.

14. The learned Advocate General, has very fairly brought to our notice the decisions in *Nijamuddin Mohammad Bashir Khan*

and another v/s. State of Maharashtra¹ and Rajeev Chaudhary v/s. (N.C.T.) of Delhi².

15. In *Rajeev Chaudhary* (supra), the Hon'ble Apex Court in the context of the provisions of Section 167 of CrPC and Section 386 of the I.P.C. had the occasion to consider the scope and import of the expression '*imprisonment which may extend to ten years*' as occurring in Section 386 of the I.P.C. and the expression '*offence punishable with imprisonment for a term of not less than ten years*' occurring in provision (a) of Section 167(2) of CrPC.

16. The relevant discussion on the aforesaid aspect is to be found in paragraphs 4, 5 and 6, which read as follows:

“4. Section 167 is a provision which authorises the Magistrate permitting detention of an accused in custody and prescribing the maximum period for which such detention could be ordered pending investigation. We are concerned with the interpretation of Proviso (a) of Section 167(2) which reads thus:-

“167. Procedure when investigation cannot be completed in twenty four hours. —

(2)...

Provided that —

(a) the Magistrate may authorise the detention of the accused person otherwise than in the

¹ 2006(5) Mh.L.J. 690

² AIR 2001 SC 2369

custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, —

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years.”

(ii)”

5. Further, Section 386 of I.P.C. provides as under:

“386. Extortion by putting a person in fear of death or grievous hurt —Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

[Emphasis added]

6. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term “not less than 10 years”, the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in case, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression “not less than” would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is

imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider Clause (i) of Proviso (a) to Section 167(2) it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 of the I.P.C. imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years.”

[Emphasis supplied]

17. The Hon'ble Apex Court has clearly held that the expression '*not less than*' would mean imprisonment should be ten years or more and would cover only this offence for which punishment would be imprisonment for a clear period of ten years or more.

18. Since, under Section 386 of I.P.C., punishment provided was of imprisonment of either description for a term which may extend to ten years and also liable to fine, the Hon'ble Apex Court held that the imprisonment can be for a clear period of ten years or less. Hence, it cannot be said that the sentence can be ten years or more or that it cannot be a sentence of not less than ten years.

19. Applying the same principle to the facts of the present case it will have to be held that offence under Section 353 of the I.P.C. cannot be regarded as an offence, the prescribed punishment for which is imprisonment of '*not less than two years*'. This is because in terms of Section 353 of the I.P.C., imprisonment can even be for a term which is less than two years or with fine or with both. In fact, in the present case, no punishment of imprisonment was ever imposed upon the Petitioners and the competent court was content with only imposing punishment of fine upon the Petitioners.

20. Accordingly, we are satisfied that the Petitioners case was not covered under Section 6(1)(b) of the said Act and the Petitioners' application for license would not have been rejected on the ground that the Petitioners' case was so covered.

21. Since, the Petitioners' application for license was not rejected on any other ground nor is it the case of the Respondents that the Petitioners' application for license was rejectable on any other grounds, we not only set aside the impugned Orders, but, direct the concerned Respondent, i.e. the Respondent No. 3, to grant the Petitioners the license as contemplated under the said Act within a period of four weeks from today.

22. Rule is made absolute in the aforesaid terms.
23. There shall be no order as to costs.
24. All concerned to act on the basis of the authenticated copy of this Order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

msr.