

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 222 OF 2019

Arun Kumar Sharma. Petitioner.

Versus

The Superintendent of Police and others. Respondents.

Petitioner in person.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for Respondents No.1 & 2.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Terence Benedicto Sequeira, Advocate for Respondents No. 4 and 5.

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

Date : 11th February, 2020.

ORAL ORDER : (Per M.S. SONAK, J.)

Heard Mr. Arun Kumar Sharma, the Petitioner in person, Mr. Pravin Faldessai, learned Additional Public Prosecutor for Respondents No.1 & 2 and Mr. S.D. Lotlikar, learned Senior Advocate along with Mr. Terence Benedicto Sequeira for Respondents No.4 and 5.

2. The challenge in this Petition is to the orders dated 20th September, 2019 and 16th March, 2019 made by the learned Sessions Judge, Panaji and the Judicial Magistrate, First Class, at Mapusa

respectively, dismissing the Petitioner's application under Section 156(3) of the Code of Criminal Procedure, 1973 (CrPC), seeking a direction for registration of an FIR as against Respondents No.4 and 5.

3. Mr. Sharma, who appears in person, points out that the averments made in the affidavit filed by him, were not even denied by the Respondents. He points out that from the context, it is very clear that the insertion of Clause 7(f) in the sale deed dated 29th January, 2016 was surreptitious and as such, an offence of cheating under Section 420 of the Indian Penal Code (IPC) has clearly been made out. He points out that from the complaint lodged by the Petitioner, it is apparent that there was entrustment of property which has ultimately been misappropriated, thereby attracting the provisions of Sections 406 and 468 of IPC. He points out that at the stage of filing a complaint, it is not expected that he proves all the allegations beyond reasonable doubt. But he has to only demonstrate that a cognizable case has been made out. He submits that he had made out, in his complaint, a cognizable case and, therefore, both the Courts seriously erred in dismissing his application under Section 156(3) of CrPC.

4. Mr. Sharma also pointed out that certain observations in the impugned orders might seriously prejudice the conduct of the civil suit, already instituted by him against Respondents No.4 and 5. He submits that there was absolutely no material before the learned

Sessions Judge to conclude that the Petitioner had, unconditionally agreed to sell 6 metres access from Survey No. 58/7-A of Village Anjuna. He submits that in the alternate, a clarification be issued that all the observations in the impugned orders will not be taken into consideration by the Civil Court while deciding the civil suit instituted by him.

5. Mr. Faldesai, learned Additional Public Prosecutor and Mr. S. D. Lotlikar, learned Senior Advocate defend the impugned orders on the basis of the reasoning reflected therein. They point out that the ingredients of the various offences as alleged by the Petitioner were never made out and, in any case, it is a matter which has essentially a civil profile and permitting registration of an FIR may, in fact, amount to abuse of the criminal process.

6. Upon consideration of the rival contentions, we are of the opinion that the view taken by the two Courts in the impugned orders cannot be said to be suffering from any perversity as such, or any jurisdictional error. The learned Sessions Judge has considered the material, in some detail, and thereafter, concluded that the ingredients of the various offences alleged by the Petitioner have not been made out and, in any case, the dispute has essentially a civil profile.

7. We have also considered the material place before us and given anxious consideration to the submissions made by the

Petitioner who appears in person. It is true that at the stage of making a complaint, there is no burden on the complainant to prove his allegations beyond reasonable doubt. It is also true that at this stage, it is not for the Court to scan the material on record with a view to find out whether there is truth in the allegations made. However, the two Courts have basically gone by the allegations made in the complaint by treating the same as substantially correct. Despite such exercise, the two Courts have concluded that the vital ingredients of the criminal offences alleged by the Petitioners, cannot be said to have been made out. More than that, we find that the complaint of the Petitioner has essentially a civil profile.

8. The Petitioner has already instituted a civil suit to seek redressal in the matter of his allegations. It is true that the act can have both, criminal as well as civil profile. However, in a matter where the profile is predominantly civil, ordinarily there is no point in permitting criminal prosecution to proceed. It is trite that criminal proceedings cannot be used to secure settlement of civil disputes or disputes which have predominantly a civil profile.

9. If the impugned orders made by the learned JMFC and the learned Sessions Judge are construed from the aforesaid perspective, then, it cannot be said that the view taken by them is either perverse or in excess of the jurisdiction which is vested in them in such matters.

10. However, Mr. Sharma is quite right in his submission that the two Courts should not have made any observations which are likely to influence the civil proceedings initiated by him. At least, the two Courts ought to have clarified that the observations are only in the context of deciding the Petitioner's application under Section 156(3) of CrP.C. and such observations are not even remotely intended to affect the civil proceedings initiated by the Petitioner against Respondents No.4 and 5. To this extent, the grievance of the Petitioner is liable to be accepted and even redressed.

11. Accordingly, though we are not interfering with the impugned orders, we clarify that none of the observations in the impugned orders should be taken into account in the civil proceedings instituted by the Petitioner. The civil proceedings will have to be decided on their own merits and in accordance with law on the basis of the evidence which the parties will produce before the Civil Court. We clarify that the observations in the impugned orders were made and are liable to be construed only in the context of deciding the Petitioner's application under Section 156(3) of CrPC and not for any other purpose.

12. Accordingly, this Petition is partly allowed in the aforesaid terms. There shall, however, be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.