

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 11 OF 2020**

Mr. Uday Anand Chari @ Uday A.
Chari Priolkar, s/o late Anand K.
Chari, major of age, service, C-5/55,
Mala, Panaji, Goa.

.... Petitioner

Versus

1) State of Goa, Through Police
Inspector, Panaji Police Station,
Panaji, Tiswadi, Goa.

2) Mr. Dileep Dhavalikar, major of
age, service, Executive Engineer-
III, Public Works Department,
Government of Goa, Tonca,
Caranzalem, Goa.

.... Respondents

Mr. Ryan Menezes, Advocate for the Petitioner.

Mr. Gaurish Nagvenker, Additional Public Prosecutor for
Respondent No. 1.

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

Date:- 28th JUNE 2021

ORAL JUDGMENT: (*per M.S. Jawalkar, J.*)

Heard Mr. Ryan Menezes, the learned Counsel for
the petitioner and Mr. Nagvenker, the learned Additional
Public Prosecutor for respondent no. 1.

2. Rule. Rule made returnable forthwith. Mr. Nagvenker, the learned Additional Public Prosecutor waives notice for respondent no. 1.

3. The present Criminal Writ Petition is instituted under Article 226 of the Constitution read with Section 482 of Cr.P.C. for quashing and setting aside FIR bearing Crime No. 260/2017 dated 01.12.2017 of Panaji Police Station along with investigation and charge sheet arising therefrom filed by Panaji Police Station vide Criminal Case No. 187/2018 pending before the Judicial Magistrate First Class, 'B' Court, Panaji, Goa, alleging the commission of offences punishable under Sections 380 and 201 of IPC.

4. It is the case of the petitioner that the petitioner and his brother by invoking the Right to Information Act obtained information about Sewage Treatment Plant (STP) operated by the Sub-Division II, Division III of P.W.D., Tonca, Caranzalem, Goa. He applied to the PIO vide application dated 16.01.2012 for the copies of the sewage analysis reports from January 2010 in respect of the sewage treated at

STP and other various information as enumerated therein. As it was revealed that the untreated sewage/effluent did not conform to the standards specified, was being discharged into Mandovi creek, he addressed a complaint to the Chief Minister of Goa and copies thereof marked to different Authorities.

5. It is further alleged by the petitioner that a noting dated 15.11.2012 of the Assistant Engineer of P.W.D., in response to the complaint dated 18.10.2012 by the petitioner, denies that there was anything untoward in the functioning of the STP. The respondent then proceeds to allege that the petitioner was making false and baseless allegations against P.W.D. based upon the petitioner "informally" obtaining copies of the "documents" of the Department, and this was required to be inquired into.

6. The petitioner further pointed out that the record of the Goa State Pollution Control Board [GSPCB] acting upon the petitioner's complaint after inspection, analysis of water samples concluded that environmental pollution was being

caused by the STP and directions were issued to the Executive Engineer, P.W.D. to check the plant performance and prevent further discharge till corrective measures were taken. Further, inspection in 2014 revealed that since the problem persisted and was not resolved, even a show-cause notice was issued to the P.W.D. by the GSPCB

7. There are civil and criminal litigations pending in respect of houses of the petitioner's family on the issue of laying of sewage pipeline. However, the petitioner's main contention is that he obtained the sewage analysis report under RTI and in any event, the F.I.R. does not spell out the ingredients of the offences alleged against him. It appears that the Executive Engineer by addressing the letter alleged that documents are not obtained under RTI and the same were obtained by the petitioner informally. The incident was reported to the Superintendent of Police (ACB) and the Directorate of Vigilance was also asked to enquire into the matter. The petitioner was called to participate in the preliminary investigations. The Chief Chemist and Assistant Chemist denied furnishing such documents to the petitioner.

The Director of IPHB was also requested to conduct a departmental inquiry into the conduct of the petitioner. Accordingly, he was served a show-cause notice for alleged unauthorized possession of the documents of P.W.D. He denied the allegation. He maintained that the documents were obtained under RTI. He also pointed out the action taken by GPSCB was based on the petitioner's complaint. It is not the case of the P.W.D. that the petitioner removed the original sewage analysis report or other original documents from the files but the only allegation is that some xerox copies were taken and used by the petitioner to make complaints to the Chief Minister and GSPCB.

8. The learned Counsel for the petitioner relied on **1992 Supp. (1) SCC 355 State of Haryana & Others Vs. Bhajan Lal & Others** and submitted that the allegations made in the FIR, even if they are taken at their face value or accepted in their entirety, do not *prima facie* constitute any offence or makes out a case to proceed against the accused. He submitted that this prosecution of the petitioner is not at all in good faith but launched only because the petitioner

dared to expose the issue of discharge of raw and untreated sewage into water bodies through the STP. He submitted that the petitioner was being hounded by the launch of this prosecution and departmental and vigilance inquiries since 2012 and such prosecution or continued prosecution amounted to the abuse of the criminal process.

9. As against this, the learned Additional Public Prosecutor submitted that the documents, which are claimed to be obtained under RTI were already in possession of the petitioner. It is the case of the prosecution that he applied for documents under RTI in April 2013 and the complaint was to the Chief Minister along with the test report and the plan of the STP in October 2012. Thus, he was in illegal possession of documents belonging to the P.W.D. As such, the offences as alleged were indeed committed by the petitioner. The learned Additional Public Prosecutor relied on **(2002) 3 SCC 89 State of Karnataka Vs. M. Devendrappa & Another** in support of his contention that powers under Section 482 of Cr.P.C. should be exercised only to prevent abuse of process of Court but not to stifle a legitimate prosecution.

10. From the perusal of the FIR, we find that the main allegation against the petitioner is that he obtained xerox copies of sewage analysis reports unauthorizedly when such documents were in the custody of the Chief Chemist, PHE Lab, W.D-III, P.W.D, Caranzalem. There is a further allegation that the petitioner destroyed the evidence that could have linked him with the theft of the documents. Based only on these vague allegations, the prosecution alleges that the petitioner has committed offences punishable under Section 380 and 201 of IPC. According to us, even if the allegations are taken at their face value, no offences for which the petitioner came to be charged can be said to have been made out particularly since the prosecution does not even allege that any original documents from the file were ever missing or were taken out by the petitioner. The prosecution does not say and perhaps could never say that such reports or documents amounted to some official secrets, particularly since it is even the case of the prosecution that such documents were eventually supplied to the petitioner under the RTI. To launch or in any case continue with the prosecution, in such circumstances would indeed amount to

persecution and consequently an abuse of the criminal process.

11. At this stage reference can be made to the definition of "Theft" under Section 378 of IPC, which reads as under:

"378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

12. As observed earlier, the ingredients necessary to constitute the offence of theft are nowhere made out in the F.I.R. In the first place, the material on record shows that the incident itself is of 2012, of which, crime was registered only after 5 years in the year 2017. The application, allegedly filed by the petitioner under RTI in April 2013 does not form the part of FIR. The main allegation is that he filed an analysis report along with the complaint dated 18.10.2012 made to the CM and thereafter to GSPCB and only thereafter applied for this report under RTI Act. The original documents are still

in possession of the Department and admittedly, the petitioner applied for those documents under RTI Act. Not only this, those were supplied by the Department to the petitioner. It is the contention of the petitioner that vide letter dated 16.01.2012, he obtained information. It was incumbent for the prosecution to at least make the application under RTI allegedly filed in April 2013 a part of the F.I.R. To allow the prosecution to proceed further, in such circumstances, is to allow the Department that was alleged to be responsible for the discharge of raw sewage into water bodies to wreak their vengeance on the petitioner for having dared to expose this by filing complaints to the CM and the GSPCB.

13. The petitioner, in this case, had merely filed complaints with the authorities about the discharge of untreated sewage in Mandovi creek, Patto, thus, contaminating the river water and causing health hazards to the people residing in the surrounding area. Based upon such complaints even the GSPCB issued a show-cause notice. However, it appears that he was persecuted for making such

complaints based on the Department's analysis reports by initiating inquiry and other proceedings against him. Just because the petitioner enclosed xerox copies of analysis reports with the complaints, he cannot be charged with theft. The original documents are admittedly there with the Department in its files.

14. As noted earlier, the F.I.R. does not refer to the copy of the application under RTI Act by the petitioner allegedly made at some later point in time or the covering letter supplying the documents under RTI to the petitioner to come to even some *prima facie* opinion that the documents were supplied subsequently when the xerox copies were already with the petitioner. On the contrary, from Exhibit-B at page 133 of the Petition, it appears that the petitioner had applied on 16.01.2012 and as there is no other application coming forth, there is no reason to disbelieve the case of the petitioner that he has applied for copies in January 2012 and the documents were issued soon thereafter. There is a typed copy of this application which bears a receipt endorsement dated 16.01.2012 on it.

15. As such, the FIR, the complaint, and the evidence placed on record in support of the same do not disclose the ingredients of any such offence for which the petitioner is charged. This, to us, appears to be a classic case of attempting to shoot the messenger instead of taking remedial measures on the message conveyed. This is nothing but sheer abuse of the process of law referred to in **Bhajan Lal** (supra). Inherent powers under Section 482 of Cr. P.C have to be exercised in a case of this nature to prevent any further abuse.

16. For all the aforesaid reasons, we are of the considered opinion that the FIR, as well as the criminal proceeding, in consequence thereof, are liable to be quashed and set aside.

17. Accordingly, we allow this Petition and quash and set aside the FIR bearing Crime No. 260/2017 dated 01.12.2017 of Panaji Police Station and the charge sheet arising therefrom vide Criminal Case No. 187/2018 before the

JMFC, 'B' Court, Panaji. Rule is made absolute in the
aforesaid terms with no order for costs.

M.S. JAWALKAR, J.

M.S. SONAK, J.

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