

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRI T PETITION NO. 12 OF 2020

1. Ms. Judith Almeida,
r/o. 257/1 Bagdem, Ward 3,
Colva, Salcete, Goa – 403 708.

2. Mr. Nixon Furtado,
son of Lindo Furtado,
major, married,
Indian National,
r/o. H. No.51, Copel Wado,
Sernabatim, Salcete,
Goa – 403 708.

.... Petitioners

V/s.

1. The State,
Through the Public Prosecutor,
High Court of Bombay,
Altinho, Panaji, Goa – 403 001.

2. Police Inspector,
Incharge, Colva Police Station,
Colva, Salcete, Goa – 403 708.

3. Mr. Amol Tilve,
Secretary, Village Panchayat
of Sernabatim, Vanelim, Colva,
Gandaulim, Panchayat Office,
Salcete, Goa – 403 708.

.... Respondents

Mr. Rohit Bras De Sa with Ms. S. Shet, Advocates for the petitioners.

Mr. Sagar Dhargalkar, Additional Public Prosecutor for the Respondents.

***Coram : T. V. NALAWADE &
SMT. BHARATI H. DANGRE, JJ***

Dated: 15th February, 2021.

JUDGMENT: (Per SMT. BHARATI H. DANGRE, J)

1. The two petitioners, who are arraigned as accused in FIR bearing no.101/2019 registered with Colva Police Station on 28.9.2019, invoking offences punishable under Sections 323, 353, 504, 506 (ii) read with Section 34 of IPC, seek the relief of quashment of the FIR. The petitioners claim that they are the social activists and the background to the FIR being lodged against them is to the effect that the petitioner no.2's brother, on 23.9.2019 had filed a complaint against Mr. Amol Tilve, Secretary of Village Panchayat, Colva, alleging several illegalities in his previous tenure as the Secretary of Colva Panchayat and that he was the person who was responsible for illegally granting NOC for the illegal constructions, reflecting that he was involved in land grabbing within the Panchayat of Colva.

2. The submission of the learned Counsel for the petitioner is to the effect that by the said complaint filed by Mr. Amol Tilve, on 27.9.2019, he seek revenge by adding the petitioners as accused. The petitioners deny the happening of any such incident which form the

basis of the complaint which resulted into registration of a FIR against the present petitioners.

3. Perused the complaint dated 27.9.2019 addressed by the complainant to the Colva Police Station, Salcete, Goa. The complainant came to be posted as the Village Panchayat Secretary of Colva and it is alleged by him that on 20.9.2019 when he was present in the office of the Block Development Officer to collect his Relieving Order, he crossed path with one Nevil Furtado, who threatened him and desisted him from accepting the Charge as Secretary of Village Panchayat of Colva. He was also threatened of being implicated in cases and being put behind the bar. The complaint stated that he kept mum and did not respond. Further incident narrated is of 26th September, when he was present along with his Advocates in consultation of High Court matter, he received repeated calls from the accused but he did not respond. That the complainant was also aware as to why the calls were made and he stated that it is on account of issuance of NOC to three movable carts, which were approved by the resolutions of the Panchayat but the accused persons were opposing the same.

4. The incident which culminated into a FIR is dated 27.9.2019 and as per the complainant at around 11.13 a.m., the petitioners came in the Office of the Panchayat and started abusing

him in filthy language. It is alleged that he was restrained from leaving his cabin and was threatened that if the NOC is not withdrawn he will have to meet with dire consequences. It is also alleged that they defamed him by uttering that he had accepted money for the work done. The complainant attempted to explain the situation to them by stating that he is a Government servant but they prevented him from discharging his lawful duties. During the incident, it is alleged that on being repeatedly questioned about the grant of NOC he explained the position to the accused persons and when he tried to justify that he is not the sole authority on the issue and he cannot withdraw the NOC wild abuses were hurled at him and the petitioner no.2 is alleged to have pushed him. When they were asked to leave the Office of the Panchayat, they created a ruckus and since he was apprehensive that the accused no.1 being a female could falsely implicate him, he called the Police by seeking help on Police Helpline to avoid any untoward incident. The Police arrived at the spot at 11.33 a.m.

5. It is in the wake of these allegations offence came to be registered under Sections 323, 353, 504, 506 (ii) read with Section 34 of IPC against the present petitioners. The Investigating Machinery was set into motion and the Panchanama of the spot was drawn and the complainant was sent for medical examination which revealed that there were no external injuries. The necessary

documents in support of the complaint being the Order of Transfer, his Joining Report, copy of Muster Roll were collated. The investigation fortify the case of the complainant, that he was transferred from Salcete to the Post of Secretary of Village Panchayat of Colva by Order issued by the Directorate of Panchayats, Panaji, Goa on 18.9.2019. He resumed his duties as Secretary of Village Panchayat of Colva on 19.9.2019.

During the course of investigation, statement of several persons came to be recorded under Sec.161. This include the statement of two eyewitnesses, who had narrated the incident as it had occurred, as per the version of the complainant on 27.9.2019. The statement of one Mr. Moses Fernandes who was present in the Colva Panchayat at around 11.00 hrs. on 27.9.2019, is recorded. He has stated that when he approached the Panchayat in relation to some inquiry with the Sarpanch, the Secretary of the Panchayat (complainant) was sitting in his Office and the two accused were present in his cabin. It is his statement that he knew both the petitioners for a long time. The witness further state that the accused persons were discussing some issue with the Secretary in loud voice, which made him approach the cabin of the Secretary, when he saw that the petitioner no.2 pushed the Secretary on his shoulder and both the accused persons were abusing the complainant in filthy words. He also witnessed to the petitioners threatening the

complainant that they will kill him and thereafter stated that the Police Personnel arrived at the Panchayat.

Another person whose statement was recorded on 26.10.2019 is Mr. Pio s/o. Anton Jose Furtado, a Panch Member, who was present in the Office of the complainant on the date of the incident. He stated that he is acquainted with the two accused persons, who entered the Office of the Secretary at 10.45 hrs. and had discussions with the Secretary in a loud voice. He also heard the accused threatening the complainant to the effect that they will not leave the Office until the NOC's are withdrawn and when the complainant tried to move out of the cabin, Nixon pushed him on his shoulder and both the accused persons abused the complainant.

6. On completion of the investigation, chargesheet has been submitted on 16.11.2019 against the two accused persons and they have been charged with the offence of abusing the complainant in filthy language and threatening him with dire consequences and with common intention of obstructing the complainant whilst discharging his lawful duties. Barring the offence under Section 353, the other offences are bailable. The statement of the witnesses corroborating the version of complainant are compiled in the chargesheet.

7. The parameters of exercise of the powers of the High

Court under Section 482 of the Code of Criminal Procedure are well settled. Section 482 of the Code of Criminal Procedure preserves the inherent powers of the High Court, which permit it to be exercised sparingly to prevent any abuse of the process of the Court or otherwise to secure the ends of justice. In exercising the said power, the High Court must evaluate whether the ends of justice would justify the exercise of inherent power and at given circumstances the High Court would be justified in declining to quash the FIR when there is sufficient material which would justify the prosecution of the accused persons.

8. In case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*¹, the Hon'ble Apex Court has identified several contingencies where the High Court would be justified in exercising its inherent power, foremost being:

- 1) Where the allegations made in the FIR, even if its taken at its face value and accepted in its entirety, do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence and make out the case against the accused.

¹AIR 1992 SUPREME COURT 604

- 3) Where the allegations made in the FIR are so absurd and inherently improbable to the extent that no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 4) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him on account of private/personal grudge.

9. By applying the principles which have been held to be the authoritative principles guiding the High Court while exercising the power under Section 482, we are not convinced that the present proceeding would fall within any of the said category. The material contained in the chargesheet fortify the allegations levelled by the complainant. The complainant who was working as a Secretary of the Village Panchayat has alleged use of criminal force on him, as a public servant in execution of his duty and prima facie it can be seen that the accused persons with their common intention to prevent or to deter him from discharging his duty, the chargesheet discloses prima facie commission of the offence and it is corroborated by the relevant material compiled in the chargesheet. The truth or genuineness of the allegations cannot be looked into at this stage, but the assessment of the accusation is a matter of trial.

10. On the perusal of the chargesheet, no case is made for quashing of subject FIR, indicting the petitioners as accused.
11. Writ Petition deserves a dismissal and is dismissed.

SMT. BHARATI H. DANGRE, J

T. V. NALAWADE, J

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