

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Revision Application NO.17 of 2020

Farida Bi Khalifa @ Farida Bandekar

Applicant

Versus

State of Goa,
Through Police Inspector,
Panaji Police Station, Panaji.

Respondent

Mr. Arun Bras de Sa with Mr. S. Sardessai, *Advocates for the Applicant.*

Mr. Mahesh Amonkar, *Additional Public Prosecutor for the Respondent -State,*

CORAM: MANISH PITALE, J

DATED: 15th September, 2021

ORAL ORDER:

1. By this Revision application, the applicant (original accused) has approached this Court, challenging an order dated 2/12/2019, passed by the Court of Judicial Magistrate First Class, whereby an application seeking discharge has been rejected and it has been directed that charge be framed against the applicant under sections 448, 323 and 504 of I.P.C.

2. In the present case, FIR was registered against the applicant on the basis of a complaint dated 31/12/2015 lodged by one Anil Kumar Nair. As per the said complaint, the applicant had allegedly forcibly entered the house of the complainant on 29/12/2015 and threatened the mother of the complainant, stating that she should vacate the house immediately. It was alleged that the applicant slapped the mother of the complainant and kicked her, causing injuries. On the basis of such allegations, offences under sections 448, 323, 504 and 506 of the I.P.C were registered at the Police Station, Panaji, North Goa against the applicant herein.

3. Upon completion of investigation charge sheet was filed on 6/4/2016. The applicant claimed that even if material brought on record pursuant to the investigation was to be perused, ingredients of the said offences were not made out. But, by the impugned order, the Magistrate disagreed with the contentions raised on behalf of the applicant and, as noted above, directed charge to be framed against the applicant under sections 448, 323 and 504 of the I.P.C.

4. Mr. Arun Bras De Sa, the learned counsel appearing for the applicant, submitted that none of the ingredients of the said offences were made out in the present case. It was submitted that

the husband of the applicant had a right in the house in question and being the wife, the applicant was entitled to enter the same and that, therefore, the present case could not be said to be a case of trespass at all. In respect of offences under sections 323 and 504 of the I.P.C, it was submitted that as per the statement of the complainant and the alleged victim herself, after the incident, she was taken to a hospital and that upon preliminary treatment she was discharged. Yet, no document showing any such medical examination or reference to any injury is found in the documents filed along with the charge sheet. It was submitted that, therefore, there was no material on record to even prima facie make out the charge sought to be levelled against the applicant. In that background, it was submitted that the delay in registration of the FIR was also a significant factor, which was ignored by the Magistrate. It was also claimed that as per the complaint, grievance was raised not only against the applicant, but also against her husband, Vishal Bandekar.

5. On the other hand, Mr. Mahesh Amonkar, the learned Additional Public Prosecutor for the Respondent-State submitted that the material on record sufficiently made out the charges levelled against the applicant. By inviting attention to section 441 of the IPC, which defines criminal trespass, it was emphasised that whenever a person enters into a property in the possession of

another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, the offence of trespass is said to be made out. It was further submitted that the statements of witnesses recorded during the course of investigation, including the statement of the mother of the complainant, a neighbour and a security guard sufficiently corroborated the narration of the incident as given in the complaint. On this basis, it was submitted that no case for discharge was made out.

6. This Court has considered the material on record. The complaint submitted by the complainant herein shows that the applicant had allegedly forcibly entered the house which the complainant claims to have purchased and it is alleged that the applicant threatened and assaulted the mother of the complainant. It is emphasised on behalf of the applicant that her husband was not party to the sale deed allegedly executed in favour of the complainant and that the said document was executed by the first wife of the husband of the applicant. On this basis it was submitted that the husband of the applicant continued to have right in the property and consequentially she also had right in the property in question, thereby indicating that the offence of trespass was not even prima facie made out.

7. This Court has considered the definition of the offence of criminal trespass given in section 441 of IPC. The crucial ingredient of

the said offence is that wherever a person enters into a property which is in possession of another with an intention to commit an offence, it amounts to criminal trespass. In the present case, the material on record does indicate that the complainant and his mother were in possession of the property in question. The contention raised on behalf of the applicant that such possession could not be said lawful possession is a matter for trial and, therefore, it cannot be said at this stage that even prima facie ingredients of the offence under section 448 of the IPC are not made out.

8. In so far as absence of medical documents in the context of offences under section 323 and 504 of IPC are concerned, again it is a matter for trial, since there are statements on record, not only of the complainant, but of his mother i.e. the victim and also the statements of a neighbour and a security guard, which appear to corroborate the manner in which the incident is said to have occurred. Such material is enough to indicate that in the facts and circumstances of the present case, the matter needs to go for trial and no case is made out for discharge. Hence, the Revision application is dismissed.

9. Pending applications, if any, stand disposed of.

MANISH PITALE, J.