

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 3 OF 2021

Shri Tukaram Bharat Parab
@Manoj Parab, Aged 34 years,
Indian National, R/o H.No.411,
Kel Wado, Pirna,
Bardez – Goa – 403 513.

..... Applicant

V e r s u s

1. State
Through Officer-in-charge,
Pernem Police Station,
Pernem, Goa – 403 521.
2. Deputy Collector & Sub-Divisional Magistrate,
Pernem Taluka,
Pernem Goa - 403 512.
3. The Public Prosecutor (High Court),
Bombay High Court at Goa,
Panaji – Goa 403 001.

Mr. C.A. Ferreira with Mr. D. Zaveri and Ms. Lawina A. Costa, Advocates for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

CORAM : M. S. JAWALKAR, J.

DATE : 8th February, 2021

ORAL JUDGMENT:

The present petition is filed by the petitioner challenging the show cause notice dated 27.01.2021 issued by the Deputy Collector and Sub-Divisional Magistrate, Pernem and for quashing the proceedings in Case No.

MAG/107/CRPC/09/2021/290 before the Deputy Collector and Sub-Divisional Magistrate, Pernem.

2. Heard Mr. C.A. Ferreira, the learned Counsel for the petitioner and Mr. S.G. Bhobe, the learned Public Prosecutor for the respondents/State. At the request and by consent of parties, the matter is taken up for final hearing at the stage of admission.

3. The petitioner's case in short is that he is resident of Pirna, Bardez, and founder member of an organisation called "Revolutionary Goans" which has been espousing several issues concerning Goa and Goans. Several Public Interest Litigations are filed by the said organisation. They are also organising series of meetings across Goa by raising social economic issues, environmental matters, etc. Therefore, the organisation also faces false complaints against its members.

4. The petitioner received show cause notice dated 27.01.2021 (Annexure 'A'), requiring petitioner to remain present before respondent no.2

in proceedings initiated under Section 107 Cr.P.C. on a report of respondent no.1. The petitioner also annexed copies of entire record of the said proceedings (Annexure 'B'). It is the contention that the impugned show cause notice is totally without jurisdiction apart from being illegal. It was alleged that meeting held on 23.01.2021 was conducted without obtaining prior permission from the competent authority. The villagers were called to instigate them, to act against orders lawfully promulgated by the public authorities and that hate speech was delivered to instigate the people. However, it was pointed out that there was no order under Section 144 of Cr.P.C. which has been promulgated and it was in force in North Goa at the relevant time.

5. I am not on the merits of the matter. Shri Ferreira, the learned Counsel for petitioner, has drawn my attention to Section 107 of Cr.P.C., which runs as under :

'107 - Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or

disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, ¹ with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction."

6. Learned Counsel for the petitioner has also drawn my attention to Section 116 and Form No. XIV. Learned Counsel also relied on various following judgments in support of his contention that the proceeding under Section 107 mandates that it should be held in the manner provided in the Court. Any deviation to the said provisions amounts to illegality and nullity.

- 1 *Madhu Limaye vs. Sub Divisional Magistrate, 1970 (3) SCC 746*
- 2 *Dwarkanath Ramchandra Angacherkar vs. State - 1976 SCC Online Bom 162 : 1877 CrLJ 120 (Bom)*
- 3 *Sona Khan & Ors. vs. State – (1980) 50 CLT 245*
- 4 *Jitendra Deshpabhu vs. Executive Magistrate – 1992 (1) Bom Cr 233*
- 5 *Christalin Costa vs. State of Goa – 1993 Mah LJ 422*
- 6 *Chandrabhan Dhengle vs Indirabai Dhengle – 1998 (1) Mah LJ 234*
- 7 *Surendra Ramchandra Taori vs State of Maharashtra – 2001 SCC Online Bom 571 : (2002) 4 Mah LJ 601 : (2002) 104 (1) Bom LR 34*
- 8 *Sana Nadim vs. State of Maharashtra – 2003 (3) Mah LJ 235*
- 9 *Mohammed Patel vs State – 2003 (4) Mah LJ 825*
- 10 *Vasant Kumar Jivrambhai Majithia vs. State of Maharashtra – 2005 SCC Online 1296: 2006 Cri LJ 1135*
- 11 *Palani & Ors. vs. Inspector of Police – 2006(3) CTC 792 (Mad).*
- 12 *Rajesh Suryabhan Nayak vs State of Mahjarashtra – 2006 (5) Mah LJ 243*
- 13 *Rajendra Singh Pathania & Ors vs. State (NCT) of Delhi – (2011) 13 SCC 329*
- 14 *Vijay Patil vs State of Maharashtra – 2014 (1) Mah LJ 422.*

7. I need not quote all the judgments as same principle is laid down.

However, I would like to quote the decision of the Hon'ble Apex Court in the case of **Madhu Limaye** (supra), wherein it is held thus at para 35:

“35. We have seen the provision of Section 107. That section says that action is to be taken 'in the- manner hereinafter--provided and this ,clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safegurds built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the ,general public.”

8. The learned Counsel also relied on **Jitendra Deshprabhu** (supra) wherein it is held as under:

“.....The facts in this case are simple and clear that apart from the Order dated 1st August, 1990, under Section 111 of Criminal Procedure Code impugned in this petition no summons has been issued to the petitioners in Form No. 14 as required under Section 113 Criminal Procedure Code. The Executive Magistrate shall do well to note that summons

required to be served under Section 113 Criminal Procedure Code is found in Form No. 14 which in its turn is included in Schedule II of the Code of Criminal Procedure. Apart from summons not being served, the petitioners are yet to appear before the Executive Magistrate. Therefore, at any rate there is no scope for the State to contend that any inquiry as contemplated under sub-section (3) of Section 116 Criminal Procedure Code has commenced. It is therefore, obvious that there is no question of any interim bond being taken from the petitioners unless the proceedings had commenced"

9. Learned Public Prosecutor Shri S. G. Bhobe, fairly conceded as to the law position. It is apparent that show cause notice issued on 27.01.2021 in 107 proceedings, is not at all in conformity with the provisions of law. Considering the citations relied on and also considering the provisions under Section 107 as well as 116, inquiry has to be carried out in the manner provided in the Act. The notice issued appears to be even without considering Form No. XIV as there is no mention of the amount of bond or surety. Notice is not at all in conformity with either Section 107, 116 or Form No. XIV of Schedule II and hence, it is liable to be quashed and set

aside being illegal. Accordingly, I proceed to pass the following order:

O R D E R

- i. The Petition is allowed.
- ii. Notice dated 27.01.2021 issued by the Deputy Collector and Sub-Divisional Magistrate, Pernem in Case No. MAG/107/CRPC/09/2021/290 is hereby quashed and set aside.
- iii. The Authority is at liberty to issue fresh notice in consonance with the provisions of Cr.P.C.
- iv. All rights and contentions of both the parties are kept open.
- v. Parties to act on authenticated copy of the order.

M. S. JAWALKAR, J.