

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.14 OF 2021

1. Mr. Ramakant @Gajendra Sawant
Son of Chandrakant Sawant,
Aged 22 years, Student,
Indian National
Residing at House No.29,
Newwada, Pilgao,
Bicholim, Goa-403 504.
2. Mr. Vishal Salgaonkar
Son of Vinayak Salgaonkar,
Aged 20 years, Student,
Indian National
Resident of House No.701/48,
Sai Nagar, Aldona, Bardez
Goa-403508.
3. Mr. Prajot Desai,
Son of Pradeep Desai,
Aged 20 years,
Resident of House No.225,
Nadora, Bardez
Goa-403513
4. Mr. Sidhant Chodankar,
Son of Sushant Chodankar,
Aged 20 years,
Resident of House No.399,
Tank Waddo,
Revora, Bardez
Goa-403513.
5. Mr. Sairaj Shirodkar,
Son of Sandeep Shirodkar,
Aged 20 years,
Resident of House No.19,
Jaidev wadda, Nachinola,
Bardez-Goa-403508.

6. Mr. Rezinald Mendes,
Son of Ciriaco Mendes,
Aged 23 years, Indian National,
Student,
Resident of House No.761/10
Rantolem, Aldona,
Bardez-Goa-403508.

... Petitioners.

V/s.

1. State of Goa
Through Officer-in-charge,
Bicholim Police Station,
Bicholim, Goa.
2. Public Prosecutor
High Court of Bombay at Goa
Panaji-Goa-403001.

.... Respondents.

CORAM: SMT. M.S. JAWALKAR,J.

RESERVED ON : 25th August, 2021

PRONOUNCED ON: 27th August, 2021

JUDGMENT :

1. Heard Mr. C.A. Ferreira, learned Counsel for the petitioner and Mr. P. Faldessai, learned Additional Public Prosecutor for the respondent - State.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. Challenge in this petition is to the order dated 03/08/2020 by which the Judicial Magistrate, First Class, 'C' Court, Bicholim dismissed the application for discharge and directed to frame charge for offence under Section 143, 147, 435 r/w. 149 IPC registered at Bicholim Police Station, North Goa District.

4. The case of the petitioners is that on the basis of an FIR No.12 of 2019 dated 16/02/2019 for offence under Section 143, 147, 435 r/w. 149 IPC registered at Bicholim Police Station, North Goa District, they were arrayed as accused and arrested and released on bail. The Charge sheet was filed against the petitioners who appeared before the Judicial Magistrate, First Class, upon summons being issued and moved an application for their discharge. The learned Sessions Judge also failed to consider the fact that neither CCTV footage is a part of chargesheet nor there is any identification parade was conducted. As such no evidence to even raise any suspicion is placed on record by the prosecution.

5. Mr. C.A. Ferreira, learned Advocate placed reliance on **Asim Shariff v/s. National Investigation Agency [(2019) 7 SCC 148]**.

6. The learned Counsel for the petitioners states that there is absolutely no material to frame the charge, no prima facie case has been made out by the prosecution, the complainant was not an eye witness, the motive is of alleged previous enmity with accused no.1 expressed itself is a suspicion. There is no material or statement as to how accused nos.2 to 6 i.e., the applicant nos.2 to 6 could have remotely been involved in the act to constitute the offence. The complainant does not make any allegations against applicant nos.2 to 6. The so called eye witnesses have not named any accused and no identification parade was conducted.

7. Mr. P. Faldessai, learned Additional Public Prosecutor submitted that the complainant has identified accused No.1 as mentioned in the complaint itself. He also claimed previous enmity between the applicants and the accused No.1.

8. I have perused the copy of the chargesheet placed on record, considered contentions of the applicant as well as the respondents. If the complaint is perused the complainant is not the person, who has seen six persons putting fire to his two wheeler. The said information was

given to him by the security person who is present at the gate of Vedanta Company. In complaint the complainant further stated that his uncle filed police report and thereafter, he saw CCTV Footage and saw three persons on CCTV footage covered their faces with mask amongst which he identified one of them to be Gajendra Sawant (petitioner No.1) based on his physical appearance as he is well known to him. The reason for his suspicion is that one year back he gave dash to his Swift car and there was arguments between himself and the said Gajendra (petitioner no.1). So far as the other accused persons are concerned as per complaint he came to know their names when he had been to Bicholim Police Station. The security guard deposed that there were six persons on three two wheelers. They were also shown CCTV footage and they have stated that they can identify them if identification parade is taken.

9. It is pertinent to note that when the case of the complainant is based on the CCTV footage, it was incumbent on the Investigating Officer to produce the same on record as it was very much available with them. Even there is discrepancy that as per the complainant

there were three persons he has seen in CCTV footage but as per the security guard there were six persons in the CCTV footage. Without there being any identification parade statement of two security guards is of no use as well as in the absence of any CCTV footage the statement of the complainant that he identified the accused no.1 from his physical appearance is also of no use. The CCTV footage can be produced by the prosecution but it is not for the reasons best known to prosecution. This fact is not at all considered by the learned JMFC as well as the learned Additional Sessions Judge.

10. The learned Counsel for the applicant relied on **Asim Shariff** (supra) in which the Hon'ble Apex Court considered the principles emerged in respect of scope of Sections 227 and 228 of CrPC in **Sajjan Kumar v/s. CBI** [(2010) 9 SCC 368]. The Hon'ble Apex Court in **Sajjan Kumar**(supra) thus held in paragraph no.21 :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under [Section 227](#) CrPC has the undoubted power to sift and weigh the

evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to 2010(9) SCC 368 determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the

court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

11. After going through these principles, it is certain that the material placed before the Court should disclose the grave suspicion against the accused and which has not been properly explained, the Court will be fully justified in framing the charge. In the present matter even if total evidence on record is taken into consideration as it is, the prosecution cannot achieve the conviction in the matter. The present case is fit for discharge of the accused from the charges. Accordingly I proceed to pass the following order:

O R D E R

1. The petition is allowed.
2. The order dated 03/08/2020 passed by the Judicial Magistrate First Class, Bicholim JMFC and order dated 06/01/2021 passed by the Additional Sessions Judge are hereby quashed and set aside. The petitioners to be discharged in Criminal Case No.32/S/19/C pending before JMFC, Bicholim.
3. Rule is made absolute in the aforesaid terms.
4. No order as to costs.

SMT. M.S. JAWALKAR, J.