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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 59 OF 2020

Rohan Ashok Khaunte, major, Indian National, married, Member of the Goa Legislative Assembly, H. No. 1081, Plot No. 46, Salvador Do Mundo, Borkar Road, Porvorim, Bardez, Goa.

...PETITIONER

Versus

1. The State of Goa, Through Police Inspector, Porvorim Police Station, Porvorim, Bardez, Goa.

2. The Police Inspector, Porvorim Police Station, Porvorim, Bardez, Goa.

3. Premanand Mahambre, major of age, Indian, resident of Chorao, Ilhas/Tiswadi, Goa.

...RESPONDENTS

Mr. S.S. Kantak, Senior Advocate with Mr. Ryan Menezes, Mr. Preetam Talaulikar, Mr. Nigel Fernandes, Ms. Gina Almeida and Ms. Saicha Desai, Advocates for the Petitioner.

Mr. Devidas J. Pangam, Advocate General with Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondent Nos. 1 and 2.

Mr. Ashwin D. Bhobe with Ms. Kalpa Govenkar and Ms. Annelise Fernandes, Advocates for Respondent No. 3.

CORAM: REVATI MOHITE DERE &
M. S. JAWALKAR, JJ.

RESERVED ON: 8th December 2021.

PRONOUNCED ON: 21st December 2021.

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

1. Heard Mr. S.S. Kantak, learned Senior Counsel appearing alongwith Mr. Ryan Menezes, learned Counsel for the petitioner, Mr. Devidas J. Pangam, learned Advocate General, who appears alongwith Mr. Pravin Faldessai, learned Additional Public Prosecutor for the respondent nos. 1 and 2 and Mr. Ashwin D. Bhobe, learned Counsel appearing on behalf of the respondent no. 3.

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

3. Mr. Faldessai, learned Additional Public Prosecutor waives service for the respondent nos. 1 and 2 and Mr. A.D. Bhobe, learned Counsel waives service on behalf of the respondent no. 3.

4. By the present petition, the petitioner has prayed for quashing FIR No.18/2020 dated 05.02.2020, registered at

Porvorim Police Station in respect of chargesheet no.101/2020 and proceedings registered vide C.C. No.455/S/2020/A before the Court of the learned JMFC, Mapusa.

5. It is the case of the petitioner that in the year 2012, the petitioner was elected as a member of the Legislative Assembly of Goa from Porvorim constituency. In the year 2017, the petitioner again contested the General Elections to the Seventh Legislative Assembly and was declared elected to be a member of the Assembly by declaration dated 11.03.2017. On 03.02.2019, the budget session of the Assembly commenced in which the petitioner raised various issues regarding performance of the Government and highlighted lack of proper administration by the Government led by Bharatiya Janata Party (BJP), which caused great discomfort to the Government. It is further the case of the petitioner that on 05.02.2019, respondent no.3 being the spokesperson for BJP addressed a press conference at the party head office and apparently raised questions qua the properties and business of the petitioner and his family. According to the petitioner, on the same day, while the petitioner and the Hon'ble former Chief Minister were walking out of the assembly hall, respondent no.3 came towards them, shook hands with them and exchanged pleasantries and then went his own way, however, Mr.

Sadanand Tanawade, the President of BJP, Goa Unit, addressed a press conference and levelled false charges against the petitioner that petitioner had assaulted respondent no.3 outside the assembly hall and demanded strict/immediate action against the petitioner when in fact no such incident had occurred.

6. On the same day, respondent no.3 filed a complaint with the speaker of the assembly alleging that the petitioner in an angry and furious manner gripped the hand of the respondent no.3 and asked him as to why he was concerned about petitioner's properties and that he will show him his father's and mother's property. Respondent no.3 then called upon the speaker to immediately order police inquiry.

7. Said complaint was then forwarded to the Porvorim Police Station, which registered it as, First Information Report No.18/2020 for the alleged offences punishable under Sections 323 and 341 of IPC. Officials/personnel of the Goa Police, on 06.02.2020, arrested the petitioner, who was then released upon executing bail bond. The petitioner has denied all the allegations made in the complaint by the respondent no.3. The petitioner thus seeks to quash and set aside the said FIR being registered mechanically without application of mind and abundantly an

abuse of process neither maintainable in law nor sustainable on facts.

8. The learned Senior Counsel Mr. Kantak submitted that subsequently, while filing the charge sheet, Section 506 of IPC was added. He further drew our attention to the complaint, which came to be filed on 05.02.2020 to the Speaker alleging incident of assault at 6:45 p.m., whereas the complaint was lodged at 9:58 p.m.

9. It is pointed out that a plain reading of the complaint/allegations therein, clearly show that none of the sine qua non ingredients of the offences defined in Sections 319 and 339 of IPC punishable under Sections 323 and 341 respectively and Section 506 of IPC are even remotely made out or disclosed therein. It is also pointed out that the incident is of 05.02.2020, whereas the 164 statement of the complainant was recorded on 10.07.2020. After recording of the said 164 statement of the complainant, statement of witnesses were recorded and that the names of the said witnesses were not referred to either in the complaint or in the statement.

10. It is submitted that the police recorded the statements of Vithoji @ Rajan Rane and Dayanand Karbotkar, whose names are

neither reflecting in the complaint nor in the statement of the complainant under Section 164 of Cr.P.C. disclosing their presence on the spot. It is submitted that the said statement was recorded on 12.08.2020, which is of no use for the prosecution and as such, the FIR, the consequent investigation and filing of the charge sheet, are all without jurisdiction and politically motivated. It is submitted that none of the sine qua non ingredients of the offences alleged in the charge sheet are made out from the contents of the charge sheet. It is submitted that the action of the public official must be fair and free from the vices of arbitrariness.

11. It is further submitted that even on perusal of the “hurt certificate” placed on record, it appears that there is no injury and only tenderness in the right wrist is seen. Further the hurt certificate reveals that there is no swelling and the movements are in full range and as such there is no ingredient even of hurt. It is submitted that even if, it is presumed that the hurt/injury is cause, still it is a non cognizable offence. However, there is no application filed before the JMFC for permission to investigate before taking cognizance of the said offence and no first information report could have been registered in view thereof.

12. It is submitted that though offence under Section 339 of IPC (punishable under Section 341 of IPC) and Section 506 of IPC are cognizable offences, the impugned FIR was registered without there being any application of mind, irrespective of whether, any of the offences under Section 319 and Section 339 punishable under Section 341 and Section 323 respectively and Section 506 of IPC are made out. It is submitted that the said FIR and investigation is actuated from malafides and maliciously instituted with ulterior motives. According to the petitioner, it is nothing but abuse of criminal process. It is submitted that nowhere in the complaint or the statement, the complainant has made a statement of wrongful restraint or threat to cause injury to his life or property.

13. It is submitted that in the IPC, there is no scope for inferences or implications. Threats to life alleged, is nothing, but, the complainant's perception. In spite of this, while filing charge sheet, Section 506 of IPC was added. It is submitted that though, Mr. Kamat and Mr. Pratap Singh Rane were alleged to be present as per the complainant on the spot, their statements were not recorded by the police.

14. In support of his contentions, the learned Senior Counsel, Mr. Kantak relied on the following citations:

- (i) State of Haryana & Others Vs. Bhajan Lal & Others, 1992 Supp (1) SCC 335;
- (ii) Superintendent of Police, CBI & Others Vs. Tapan Kumar Singh, (2003) 6 SCC 175;
- (iii) Randheer Singh Vs. State of U.P. & Others, 2021 SCC Online SC 942.
- (iv) Manik Taneja & Another Vs. State of Karnataka & Another, (2015) 7 SCC 423 and
- (v) Vithal Puna Koli (Shirsath) & Others Vs. State of Maharashtra & Another, 2006 All.M.R. (Cri.) 3021.

15. Learned Advocate General Mr. Pangam submitted that there was a clear cut case of offence under Section 341 of IPC as by holding the wrist of the complainant, the complainant was restrained by the accused from proceeding towards the Assembly Hall. He relied on the decision of the Hon'ble Apex Court in **Zandu Pharmaceutical Works Ltd. & Others Vs. Mohd. Sharaful Haque & Another, (2005) 1 SCC 122** in order to submit that exercise of power under Section 482 of Cr.P.C. in a case of this nature, is the exception and not the rule and this power can be invoked only (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court and (iii) to otherwise secure ends of justice.

16. The learned Advocate General brought to our notice the wordings of the complaint and submitted that specific words of restraint may not be present in the complaint, but it has to be inferred. The words, why you are so concerned of my property (तुका म्हज्या प्रॉपर्टीचे चड पडला रे ?), I will show you (दाखयता तुका सारके), I will show you your father and mother's properties too (तुज्या आवय-बापायच्यो प्रॉपर्टी दाखयता तुका) !" amount to threat to the properties. It is submitted that the conduct of the accused also goes to show that he has threatened the complainant, which created an apprehension in the mind of the complainant about damage to his life and property. As such, all ingredients attracting Section 339, 341 and 506 of IPC are present. Insofar as Section 323 of IPC is concerned, medical report shows that there is tenderness in the wrist and the complainant alleged pain, which is also one of the ingredients of Section 319 of IPC, which defines 'Hurt'.

17. It is submitted that at this stage, it cannot be said that there is no material on record to register FIR to file charge sheet. It is submitted that it is a settled position of law that the complaint may not give all the details, therefore, one has to look to the statement recorded under Section 164 of Cr.P.C., which is in detail. It is submitted that what is of significance is that the

information given must disclose the commission of a cognizable offence and the information so given must disclose the commission of a cognizable offence and the information so lodged must provide the basis for the police officer to suspect the commission of such an offence. It is submitted that for taking up investigation in cognizable case it is enough if the police officer on the basis of information given suspects the commission of cognizable offence and not that he must be convinced or satisfied that a cognizable offence is committed. In view of the aforesaid, the learned Advocate General prays for dismissal of the Petition.

18. We have heard both the parties at length.

19. The relevant extract of the complaint is reproduced below.

“In my capacity as the Spokesperson of my party, I took part in a press conference held today at 4.00 pm at the BJP Head Office in Panaji. In the said press briefing I had raised certain issue pertaining to the assets and businesses of Shri. Rohan Khaunte who happens to be the MLA of Porvorim and Ex-Minister Revenue & IT, Govt. of Goa.

After the said press briefing, I moved to the Assembly at Porvorim to listen to the speech of Hon. Chief Minister regarding the reply to the Motion of thanks to the Governor of Goa. As I was moving towards the corridor at about 6:45 pm, I met Shri. Digambar Kamat as well as Shri. Rohan Khaunte. Looking at me Shri. Rohan Khaunte got angry and

furious. He gripped my hand tightly and in furious tone he asked me as to why I am so concerned for his properties? (in Konkani-तुका म्हज्या प्रॉपर्टीचे चड पडला रे ?), I will show you. (दाखयता तुका सारके), I will show you your father and mother's properties too (तुज्या आवय-बापायच्यो प्रॉपर्टी दाखयता तुका) !”

20. From the complaint, it can be very well seen that the complaint does not even *prima facie*, disclose the existence of the sine qua non ingredients of the offences under Sections 339, 341, 503 and 506 of IPC.

21. Section 339 of IPC defines wrongful restraint as under:

339. Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

22. Section 341 of IPC prescribes punishment for wrongful restraint as under:

341. Punishment for wrongful restraint. — Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

23. In order to constitute an offence of wrongful restraint, the following ingredients must be established:

- (i) that there is an obstruction;
- (ii) that the obstruction prevents the person from proceeding in any direction and
- (iii) that the person so proceeding must have right to proceed in the direction concerned.

24. To support the charge of wrongful restraintment, there is atleast such an impression produced in the mind of the person confined, as to lead him, reasonably to believe, that he was not free to depart and that he would be forthwith restrained, if attempted to do so. Thus, whoever obstructs a person from proceeding in a direction from which the person has a right to proceed, commits an offence of wrongful restraint, which is punishable under Section 341 of IPC.

25. After going through the contents and considering the background of the complaint, the words in Konkani-तुका म्हज्या प्रॉपर्टीचे चड पडला रे ?), I will show you. (दाखयता तुका सारके), I will show you your father and mother's properties too (तुज्या आवय-बापायच्यो प्रॉपर्टी दाखयता तुका) do not appear to be any threat to the property or life. In our considered opinion, it is just a threat to expose to the complainant or his parents in respect of

the properties they are holding. It is important to note that in a press conference, the complainant, who is spokesman of BJP made a statement against the accused and in respect of the property he is holding. Thus, the bare reading of the complaint and accusation therein does not disclose any ingredients of the offences defined under Section 339, 341 and 506 of IPC.

26. Section 503 of IPC defines criminal intimidation. The offence of criminal intimidation requires either a person or another in whom he is specially interested to be threatened. There must be an intention to cause alarm to the former by a threat to him of injury to himself or latter. This section has the following essentials:

1. Threatening a person with any injury.
 - (i) to his person, reputation or property; or
 - (ii) to the person, or reputation of any one in whom that person is interested.
2. The threat must be with intent.
 - (i) to cause alarm to that person, or
 - (ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or
 - (iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

27. Section 506 of IPC relates to punishment for criminal intimidation. For being an offence within the meaning of Section 506 of IPC and punishable under Section 506 of IPC, the threat should be a real one and not just a word. The words uttered by the petitioner does not constitute any threat to life or property of the complainant. At the most, it can be inferred that it is threat to expose in relation to his or his parent's property.

28. There is no specific allegation that the petitioner had threatened the complainant with injury to his person, reputation or property or to the reputation of any one in whom the complainant is interested with the intention to cause alarm. Mere threats given by the accused not with an intention to cause alarm to the complainant, but with a view to deterring him from interfering with what the accused believed to be his personal right would not constitute an offence of criminal intimidation.

29. Under Section 506 of IPC, there must be an act threatening another person of causing an injury to other person, reputation or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with an intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act, which he is legally entitled to do.

30. Similarly, insofar as offence of wrongful restraint is concerned, as alleged by the complainant, there is nothing about restraintment in the complaint. Holding of wrist of the complainant for few seconds without any intention of restraining the petitioner in proceeding in any direction. It will not amount to wrongful restraint. The wrongful restraint is offence when one voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed. Here on the face of the complaint, there is no such restraint to the complainant from proceeding. On the contrary from the statement of complaint, he has stated that after i.e. the incident of gripping wrist and uttering words, Mr. Khaunte proceeded towards staircase and the complainant just stood there. Thus, absolutely there is no any intention or act of restraintment. The complaint before the speaker speaks of high handed behaviour of the elected representative.

31. In the complaint, it is mentioned that the petitioner gripped the hand of the complainant tightly and in furious tone he asked the complainant as to why he is so concerned for his properties. It is well settled that a FIR is not an encyclopedia, which must disclose all facts and details relating to the offence disclosed. However, there must be satisfaction on the part of the

investigating officer that the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate.

32. In the present case, it is alleged that the petitioner has abused the complainant and gripped the wrist of the complainant. It is the intention of the accused that has to be considered for deciding the meaning of criminal intimidation. The threat must be with a intention to cause harm to the complainant as required under Section 506 of IPC. Thus, if the allegation in the complaint, even if, they are taken at their face value, do not constitute offence either under Sections 341 or 506 of IPC. Thus, the registration of the FIR for having committed the offence under Sections 341 and 506 of IPC are liable to be quashed and set aside.

33. So far as the offence under Section 323 of IPC is concerned, it is non cognizable offence and in view of Section 155(2) of Cr.P.C., the police officer cannot investigate a non cognizable case without the order of the concerned Magistrate and the entire investigation vitiates on that ground.

34. Section 155 in The Code Of Criminal Procedure, 1973 reads as under:

155. Information as to non- cognizable cases and investigation of such cases.

(1)

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3)

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable.

35. From the complaint placed on record, it is alleged therein that the accused gripped the hand of complainant tightly and made some altercations in furious tone. Medical report shows that there is tenderness in right wrist, however, there was no swelling and there was only history of pain of the right wrist. The definition of hurt reads as under:

319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

36. Thus, even causing pain is covered under the definition of hurt, therefore, it appears that there is some substance in the allegation that the petitioner has committed the offence under

Section 323 of IPC. However, the said offence is non cognizable offence and as such, the said offence cannot be investigated by the police officer without orders from any competent Magistrate as held in *Vithal Puna Koli* (supra).

37. In **Bhajan Lal** (supra), the Hon'ble Supreme Court gave categories of cases by way of illustration wherein such power under Section 482 of the Code could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. These are based on the principles of law enunciated by the Hon'ble Apex Court relating to the exercise under extraordinary power under Article 226 or the inherent powers under Section 482 of Cr.P.C. The said illustration reads as under:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide 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 due to private and personal grudge.

38. In view of these illustrations, in our considered opinion, the allegations made in FIR do not clearly constitute a cognizable offence justifying the registration of a case or the commission of any offence under Section 341 or 506 of IPC against the accused and the FIR in respect of the said charges is liable to be quashed and set aside.

39. It appears that though there is prima facie case made out of having committed offence under Section 323 of IPC, it being a non cognizable offence, no investigation is permitted by a police officer without the order of the Magistrate as contemplated under Section 155(2) of the Cr.P.C. As such, the FIR registered with respect to having committed an offence under Section 323 of IPC is also liable to be quashed and set aside. Consequently, the charge sheet on the basis of the said FIR is also liable to be quashed and set aside. The investigating officer is at liberty to take necessary steps as per the provisions of law.

40. Accordingly, we proceed to pass the following order:

O R D E R

(a) The Petition is allowed.

- (b) The impugned First Information Report bearing Crime No. 18/2020 dated 05.02.2020 of Porvorim Police Station and Chargesheet No. 101/2020 of Porvorim Police Station and proceedings registered vide Criminal Case No. 455/S/2020/A before the Court of JMFC, Mapusa is hereby quashed and set aside with all consequences and effects.
- (c) The Investigating Officer is at liberty to take necessary steps as per the provisions of law, as far as the offence under Section 323 of IPC is concerned.
- (d) The Petition stands disposed of.

41. All parties to act on an authenticated copy of this Order.

M. S. JAWALKAR, J. REVATI MOHITE DERE, J.

VAIGANKAR
ESHA SAINATH

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