

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 84 OF 2020

1. Mr. Jeoffery Pereira, S/o Ligorio Pereira, Major of age, unmarried, Business, Indian National

2. Mr. Joao Pereira, S/o Ligorio Pereira, Major of age, unmarried, Service, Indian National Both residents of Utorda, Salcete, Goa.

..... Petitioners. .

Versus

1. State of Goa Through Police Inspector, Verna Police Station, Margao, Goa.

2. Mr. Alexio Pereira S/o Mr. Arnolf Pereira, [H.No.](#) 150, Uttorda, Majorda, Salcete, Goa.

3. Public Prosecutor High Court of Bombay at Goa High Court Building, Panaji — Goa.

....Respondents.

Mr. G. Teles, Advocate for the petitioner.

Mr. Pravin Faldessai, Addl. Public Prosecutor for respondents No.1 and 3.

Mr. D. Zaveri, Advocate for Respondent No.2.

**CORAM: DIPANKAR DATTA, CJ &
M. S. SONAK, J.**

DATED: 18th August 2021

P.C.:-

1. The petitioners, by this application dated 9th March, 2020 filed under Section 482 of the Code of Criminal Procedure Code,

1973, read with Article 227 of the Constitution, seek the following relief:

“A. Quash and set aside Charge Sheet No.41/2018 dated 12/7/18 filed before the Respondent No. 1 based on F.I.R No. 80/2015 as against the Petitioners and consequently;

B. Quash and set aside Criminal Case No. 268/S/2018/Ist before the Judicial Magistrate First Class, Margao against the Petitioners.

C. Quash and set aside Impugned Order dated 01/07/2019 passed by the Judicial Magistrate First Class, Margao in Cri. Case no.268/S/18/Ist and order 04/01/2020 passed by the Additional Sessions Judge Margao in Criminal Revision Application No. 62/2019.”

2. It is revealed from the application that on the basis of a complaint lodged by the respondent 2 against the petitioners, Verna Police Station FIR No.80/15 dated 30/7/2015 was registered under Sections 341, 427, 504, 506 (ii) read with Section 34 of the Indian Penal Code (IPC). Completion of investigation of the First Information Report (FIR), resulted in filing of Charge-sheet No.41/2018 dated 12/7/2018 under Section 173(2) of the Code of Criminal Procedure (Cr.P.C), before the Judicial Magistrate First Class, Margao, under the

aforesaid provisions of law arraigning the petitioners as the accused.

3. The case of the prosecution was that on 30/04/2015, minutes prior to midnight, the accused persons (the petitioners) with common intention wrongfully restrained the complainant (respondent 2) while he was proceeding in his motor car (make: Mercedes Benz) and that the accused damaged such car by banging and pelting stones. The accused, it was complained, had abused the respondent 2 with filthy language and threatened him with dire consequences.

4. An application for discharge was filed by the petitioners before the Magistrate. By an order dated 01/07/2019, the Magistrate discharged the petitioners under Section 341 read with Section 34 of the IPC, but charged them with offences under Sections 427, 504 and 506(ii) read with Section 34 of the IPC.

5. Aggrieved by that part of the order dated 01/07/2019 of the Magistrate not discharging them entirely, the petitioners presented a revision petition before the District & Sessions Court, South Goa, at Margao. By an order dated 04/01/2020, the revisional Court held that the order under revision did not call for any interference and, accordingly, the revision petition was dismissed.

6. It is these orders that have been challenged in this application, together with the charge-sheet filed under Section 173(2) of the Cr.P.C.

7. We have heard learned advocates for the parties, read the written complaint giving rise to the FIR and perused the orders passed by the Magistrate as well as the Sessions Judge.

8. It has transpired in course of hearing that in respect of the self-same incident referred to by the respondent 2 in his complaint, there is a counter complaint by the petitioners against such respondent to the effect that it was he who had abused the petitioners, assaulted them and breached peace, leading to registration of a separate FIR.

9. The power of the High Court to quash a first information report/charge-sheet to prevent abuse of the process of the Court, in exercise of its inherent powers preserved by Section 482 of the Cr.P.C., is well-recognised. The three circumstances on the existence of which exercise of inherent powers is envisaged are when (i) an order under the Cr.P.C. has to be given effect; (ii) abuse of the court is required to be prevented; or (iii) otherwise, the interest of justice has to be secured. While exercising its inherent power, the Court has to remember that such power must be sparingly exercised and in exceptional cases, since it is not akin

to exercise of appellate or revisional powers. Exercise of the power must be for advancement of justice and prevention of injustice, upon recording of a satisfaction that the injustice might result from an abuse of the process of the Court. In a case of the present nature, the Court's endeavour ought to be to find out whether continuance of the proceedings against the petitioner would amount to an abuse of the process and quashing thereof would sub-serve ends of justice.

10. Law in this regard is well-settled that the complaint in its entirety has to be examined on the basis of the allegation levelled and whether any offence is made out even if the allegations are accepted on face value.

11. Although it is not possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent powers preserved by Section 482 of the Cr.P.C., categorisation of cases where such power can and should be exercised to quash proceedings are found in the decisions of the Supreme Court in *R.P. Kapur vs State of Punjab* (AIR 1960 SC 866) and *State of Haryana vs. Bhajan Lal* (AIR 1992 SC 604). Such decisions, at the same time, caution that the Court's interference cannot be based on arbitrary assumption of jurisdiction according to its whims and caprice.

12. Having read the written complaint, together with the findings recorded in the orders under challenge by the Magistrate as well as the Sessions Judge, none of the circumstances on the existence whereof the law laid down in *R.P. Kapur* (supra) and *Bhajan Lal* (supra) could be applied, exists in the present case. Ingredients of the offences, as alleged in the complaint, are indeed available and, therefore, it would be imprudent on our part to stifle the prosecution at this stage. Whether the petitioners by their criminal acts wrongfully restrained the respondent 2 or by mischief damaged his car or intentionally insulted/criminally intimidated him, are matters which require a decision after a full-fledged trial. That the petitioners were present at the place of occurrence is *prima facie* established by reason of their counter-complaint and any alibi could be ruled out. We place on record having noted that all the arguments raised before us by the learned advocate for the petitioners to the effect that apart from the complainant himself (respondent 2) there is no other witness to support the allegation levelled or that there is complete lack of evidence to drive home the charges or that a false case has been registered against the petitioners with *mala fide* intention or that the FIR does not disclose any offence or that the specific abusive language used by the petitioners do not find place in the

complaint, were previously raised before the Sessions Judge and the same have been appropriately dealt with by such Judge by relying upon relevant decisions of the Supreme Court as well as other high courts.

13. The decision of the Supreme Court in Anand Kumar Mohatta Vs. State (NCT of Delhi) Department of Home [(2019) 11 SCC 706], relied on by the learned advocate for the petitioners, has been considered. Having regard to the discussions as above, the said decision would be of no help for advancing their claims.

14. In such view of the matter, this is not an exceptional case where subjecting the petitioners to a trial would amount to an abuse of the process of the Court. Thus, we find no reason to interfere.

15. The application stands dismissed, without costs.

16. The trial Court is encouraged to proceed with expedition.

M. S. SONAK, J.

CHIEF JUSTICE

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
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