

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.20 OF 2021

Shri Budho Arjun Gaonkar,
38 years of age,
Son of late Arjun Gaonkar,
r/o H. No. 141, Borkotem, Mollem,
Dharbandora – Goa.

... Petitioner.

Versus

1. State

Through Shri Pradeep S. Sawant,
Head Constable,
Collem Police Station,
Collem – Goa.

2. Shri Govind K. Gaonkar,

Major of age,
r/o H.No.214, Borlotem, Mollem,
Dharbandora – Goa.

3. Shri Rama Sawant,

Major of age,
Manager,
C/o Vendanta Sesa Goa Iron Ore Ltd.,
Codlem, Kirlapar, Dabal,
Dharbandora – Goa.

4. Shri Vedant Sawant,

Major of age,
Mining Engineer,
C/o Vendanta Sesa Goa Iron Ore Ltd.,
Codlem, Kirlapar, Dabal,
Dharbandora – Goa.

... Respondents.

Mr. Ashwin D. Bhobe with Mr. Chirag Angle, Advocates for the Petitioner.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Respondent No.1.

Mr. Shivraj Gaonkar, Advocate for the Respondent No.2.

Mr. A. Gosavi, Advocate for the Respondent No. 3.

Coram: Nitin W. Sambre, J.

Date: 23.03.2021.

P. C.

In the proceedings initially initiated under Section 145 of the Criminal Procedure Code which was later on converted into the proceedings under Section 147 of the Criminal Procedure Code vide orders impugned, the petitioner suffered prohibitory directions. Feeling aggrieved, the present petition.

2. The petitioner as such is questioning the proceedings initiated and pending on the file of Deputy Collector and Sub Divisional Magistrate, Dharbandora Goa being proceedings No. MAG/145/07/2021, order impugned passed on roznama dated 01.03.2021 and also the order dated 03.03.2021.

3. Vide order impugned dated 01.03.2021 the learned Magistrate has ordered thus:

'01/03/2021 Matter called out today, Party no. I present in person. Party No. II present in person alongwith Adv. Party No. III absent. Party no. I filed application for detail enquiry. Since the dispute is with regard to the use of land in survey no. 33/1 of Village Collem, the matter is proceeded under Section 147 Cr.P.C. and pleadgs are completed at preliminary stage. Matter posted for Interim Order thereafter detail enquiry as per application of Party I shall proceed. Matter stands on.'

4. As far as the order impugned dated 03.03.2021 is concerned, vide said order the prohibition is clamped against the petitioner as it is observed that the petitioner was interfering in the use of road in Survey No.33/1 at Bhorcate, of Village Collem. As the said road is existing on the survey record maintained by the office of the Land Surveyor, as consequences, the petitioner is prohibited from causing any interference in the use of the road by respondent to the petition by parking his truck on the said road or by way of any other means.

5. The facts necessary for deciding the present petition are as under:

The Police Inspector, Collem Police Station on 09.02.2021 submitted a report to the Deputy Collector and Sub-Divisional Magistrate concerning likely dispute which might result into breach of peace in view of blockage of road by parking of truck. The Deputy Collector accordingly registered a case under Section 145(1) of Cr.PC and called upon the petitioner and the respondent No.2 onwards to attend his court with their respective written statements as regards actual position on the subject dispute.

6. A copy of the report submitted by the Police Station Officer of the Collem Police Station was also enclosed alongwith the relevant panchanama.

7. It appears that the respective parties submitted their objection in response to the claim made through the notice issued by the Sub Divisional Officer on the report from the Police Station Officer.

8. The petitioner who is party no.1 to the said proceedings submitted its objections claiming that the property mentioned in the dispute is owned by him which is consisting of Survey No.33/1. He has drawn support from the title documents, i.e. Certificate of Inscription and Description and also his own family tree. According

to him, the respondent No.2 has no locus to claim any right in the property. He would claim that respondents No.2 and 3 are using the road passing through their property contrary to the order dated 23.12.2020. It is further claimed that the proceedings were wrongly referred by the Police Station Officer under Section 145(1) of the Cr.P.C.

9. The respondents No.2 and 3 through their individual reply objected to the claim of the petitioner. The petitioner thereafter submitted his counter before the Sub-Divisional Magistrate.

10. Thereafter, vide the first impugned order dated 01.03.2021 the Sub-Divisional Magistrate decided to proceed under Section 147 of the Cr.PC even though the notice was issued under Section 145(1) of the Cr.P.C. Thereafter, vide second impugned order⁴ dated 03.03.2021 the Sub-Divisional Magistrate directed the petitioner not to interfere in the use of the road.

11. Shri Bhobe, learned Counsel for the petitioner while questioning both the impugned orders and also the proceedings initiated based on the report submitted by the Police Station Officer would urge that once proceedings are initiated based on a notice

issued under Section 145(1) of Cr.P.C., same ought not to have been converted to that of provisions under Section 147 of the Cr.P.C. His further contention is, the proceedings under Section 145 Cr.P.C. initiated on the report of the Police Station Officer should culminate only by exercising jurisdiction under said section either by allowing or dismissing the same, and the authority has no power to convert the same to that of proceedings under Section 147 of the Cr.P.C. Shri Bhobe would accordingly invite attention of this Court to the provisions of Section 147 of Cr.P.C., to show that the orders impugned are contrary to the scheme therein. According to Shri Bhobe, substantial prejudice is caused to the petitioner as the petitioner was not offered appropriate opportunity, in the matter.

12. While countering the aforesaid statements, the learned Public Prosecutor would support the orders impugned. Apart from above, the respondent No.2 and 3 would claim that the provisions under Section 147 empowers the authority to pass order and as such the order cannot be said to be without jurisdiction. As such, according to them the petition is liable to be dismissed.

13. Having considered the rival submissions, in my opinion the only issue which warrants consideration is whether the Sub Divisional Officer while dealing with the proceedings pursuant to a

report submitted by the Police Station Officer has committed an error in invoking provisions of Section 147 of Cr.P.C. when the initial notice was under provisions of Section 145(1) of the Cr.P.c. If we consider scheme of Section 145 and 147 of the Cr.P.C, both these provisions can be invoked based on the report submitted by the Police Officer or upon other information, in case of likelihood of a dispute which may cause breach of peace concerning any land or water or the boundaries, within the local jurisdiction.

14. The factum is, Police Station Officer in the case in hand has submitted a report for initiating proceedings pursuant to Section 133 Cr.P.C, restraining the petitioner from parking his truck bearing registration No.GA-09-U-0698 which was creating nuisance to the movement of the general public and the vehicles. It is also prayed in the said report by the Police officials to issue notice to the parties to the report, under Section 145 of the Cr.P.C. Consequently, the Deputy Collector issued a notice under Section 145(1) of the Cr.P.C.

15. The Deputy Collector thereafter has given a chance to the parties vide his order dated 03.12.2020 to settle the dispute amicably and directed them to maintain status-quo.

16. It appears that since the dispute was not settled, the matter was taken up for hearing on 01.03.2021 at which stage the petitioner filed an application for detailed inquiry.

17. On 01.03.2021 vide order impugned this authority noted that since the dispute as is sought to be canvassed by rival parties before him is in regard to use of land survey No.33/1 of Village Collem, he formed an opinion that the matter be proceeded under Section 147 of the Cr.P.C. The aforesaid order was duly communicated to the parties including the petitioner and the petitioner had knowledge about the fact that the Sub-Divisional Magistrate is taking up the proceedings under Section 147 Cr.P.C, even if earlier he was noticed under Section 145(1) of the Cr.P.C. It is to be noted that after hearing the parties he posted it for passing of the interim order on 03.03.2021 with an observation that the detailed inquiry as per the application moved by the petitioner shall be proceeded with.

18. In the aforesaid background it cannot be said that the petitioner was not having knowledge about the act fact that the Sub-Divisional Officer was dealing with the proceedings, under Section 147 of the Cr.P.C. and not under Section 145 of the Cr.P.C. As discussed above, Section 147 also contemplates that the authority i.e.

the Sub-Divisional Magistrate to initiate proceedings as has been rightly done in the case in hand. In case if there exist a dispute in relation to land or water, as reflected in the police report, as is submitted in the case in hand, the very requirements for invoking provisions of Section 147 Cr.P.C.can be inferred.

19. Apart from above it cannot be said that the order impugned passed by the Sub-Divisional Magistrate are without jurisdiction particularly, when he has every authority to pass such an order under Section 147 of the Cr.P.C. In view of express provisions which confer jurisdiction on the Sub-Divisional Magistrate particularly under Section 145 and 147 of the Cr.P.C. and the fact that the petitioner has failed to demonstrate any prejudice in the matter of conversion of the proceedings from 145 to 147 of the Cr.P.C., in my opinion, the order impugned cannot be faulted with.

20. In that view of the matter, in my opinion, no illegality or material irregularity is noticed, which has caused any prejudice while passing the impugned orders. As such, the orders impugned dated 01.03.2021 or 03.03.2021 do not call for any interference. That being so, the petition fails and the same is dismissed.

21. However, this will not preclude the petitioner from pursuing his application for detailed inquiry which is pending adjudication before the Sub-Divisional Magistrate.

NITIN W. SAMBRE, J.

msr.