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IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Revision Application No.28 of 2019

JACK SANTANA
FERNANDES,
SON OF (LATE) MR. FRANCISO
FERNANDES, INDIAN NATIONAL,
MARRIED, 55 YEARS OF AGE,
EMPLOYED AT GOA SHIPYARD LTD.,
RESIDING AT HOUSE NO.307/B,
BEHIND AMBABAI TEMPLE,
MANGOR HILL, VASCO DA GAMA
AND 2 OTHERS.

PETITIONERS

Versus

1) MARIA MARTHA BARRETO
E. PEREIRA, PROPRIETOR OF M/S.
MARY LIQUOR SHOP, WIDOW OF
(LATE) MR. ROMOUIDO PEREIRA,
63 YEARS OF AGE, INDIAN
NATIONAL, RESIDING AT ROMA
MANSION, NEAR OUR LADY OF
CANDELARIA CHURCH,
SASMOLLEM, BAINA, VASCO DA
GAMA, GOA.

2) STATE,
THROUGH PP,
HIGH COURT OF BOMBAY,
PANAJI.

RESPONDENTS

**Mr. Arun De Sa with S. Sardesai, Advocates for the
Petitioners**

**Mr. Ryan Menezes with N. Fernandes, Advocates for the
Respondent no.1.**

**Mr. Pravin Faldessai, Additional Public Prosecutor, for the
Respondent no.2.**

**CORAM: MANISH PITALE, J
DATED: 29th September, 2021**

Oral Order:

- 1.** By this Revision application, the applicants i.e., the original accused persons have challenged order dated 7/2/2019 passed by the Court of Additional Sessions Judge, South Goa, Margao, whereby a Revision application filed by the respondent no.1 (original complainant) was allowed and the order of the Magistrate was set aside, with a further direction to the Magistrate to proceed in accordance with law.
- 2.** The respondent no.1 filed a complaint under section 200 of the Cr.P.C alleging that the applicants herein had forcibly entered into a shop being run by her and that they indulged in damaging property. She also alleged that when she reached the said shop upon receiving information about such forcible entry by the applicants, she witnessed that her son was assaulted by the applicants and in the process a lady constable was also assaulted.
- 3.** It appears that the Magistrate chose to proceed under section 202 (2) of the Cr.P.C by initiating an inquiry and taking evidence of witnesses on oath. The respondent no.1 i.e. the original complainant, deposed on oath in support of the complaint. The Magistrate recorded evidence of three other witnesses also. After perusing the contents of the complaint and

the statements of the witnesses on oath, the Magistrate concluded that no case was made out for issuance of process. The Magistrate found that the material on record appeared to demonstrate that there was a dispute regarding possession of the shop and that a proceeding under section 145 of Cr.P.C could be undertaken.

4. Aggrieved by the same, the respondent no.1 filed Revision application before the Sessions Court. By the impugned order, the application was allowed. The order of the Magistrate was set aside and a direction was issued to the Magistrate to proceed in accordance with law.

5. Mr. Arun De Sa, the learned counsel appearing for the applicant submitted that a perusal of the statement of respondent no.1 itself would show that in the incident in question, the son of the respondent no.1 and a lady police constable had allegedly suffered injuries. The son of respondent no.1 and the lady constable were not examined. There was no material on record in the form of medical papers to show any kind of injuries suffered by the alleged victims. It was further submitted that in such a situation, the Magistrate was justified in refusing to issue process and in dismissing the complaint. It was further submitted that even if the version of the complainant was to be taken on its face value, the Magistrate ought to have directed initiation of police inquiry in the matter.

6. On the other hand, Mr. Menezes, the learned counsel appearing for respondent no.1 submitted that the order passed by the Court of Additional Sessions Judge was justified and that upon proper appreciation of evidence i.e. the statements of the

witnesses, in paragraph 22 of the impugned order, it was indicated as to which offences were prima facie made out. A proper reading of paragraphs 22 and 25 of the impugned order would be enough to guide the Magistrate to proceed in accordance with law.

7. Heard the learned counsel for the rival parties and perused the material on record.

8. A perusal of the statement of respondent no.1 i.e. the original complainant and 3 witnesses would show that all of them had deposed in respect of the manner in which the applicants had allegedly forcibly entered into the shop in question and the activities they had undertaken after entering the said shop. Respondent no.1 indeed claimed to be an eye witness of the said incident of assault on her son. Even though the victim may not have been examined by the Magistrate, a proper reading of the statements of respondent no.1 and the three witnesses would show that the Magistrate clearly erred in dismissing the complaint.

9. The Court of Additional Sessions Judge properly appreciated the material on record and in paragraph 22 of the impugned order indicated the offences that were prima facie brought out by the material on record. It is in the context of paragraph 22 of the impugned order that the Court of Additional Sessions Judge, in paragraph 25 thereof, observed that the Magistrate would now be required to issue process against the applicants for the offences prima facie brought out by the material on record. In the operative portion of the order, while

quashing and setting aside the order of the Magistrate, the Additional Sessions Judge specifically directed the Magistrate to proceed in accordance with law.

10. This Court is of the opinion that the impugned order passed by the Additional Sessions Judge is based on proper application of law in so far as appreciating the material on record at the stage of issuance of process is concerned. Therefore, no case is made out for interference with the impugned order. Accordingly, the Revision application is dismissed.

MANISH PITALE, J.

MARIA
AURA
PEREIRA



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by MARIA AURA
PEREIRA
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