

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 64 OF 2020

VICTOR TOLENTINO DIAS.,

.... PETITIONER

Versus

STATE OF GOA, THR. POLICE
INSPECTOR ATTACHED TO OLD GOA
POLICE STATION, OLD GOA AND
ANR.,

.... RESPONDENTS

Mr. Richard Almeida with Mr. Haston Lorengo, Advocates for
the Petitioner.

Mr. Gaurish Nagvenker, Additional Public Prosecutor for the
Respondents.

Coram:- M.S. JAWALKAR, J.

Date:- 9th February, 2021

ORAL ORDER:

Heard Mr. Almeida, the learned Counsel for the
petitioner and Mr. Gaurish Nagvenker, the learned Additional
Public Prosecutor for the respondents.

2. By consent and at the request of the learned
Counsel for the parties, this Petition is heard finally at the
stage of admission.

3. The present Petition is filed challenging the order in Criminal Revision Application No. 99/2018 passed by the learned Additional Sessions Judge and in Criminal Case No. 161/2017/C passed by the learned JMFC, Panaji.

4. It is the contention of the petitioner that there is no case at all made out to frame charge under Section 509 of IPC. It is submitted that the impugned order of the learned JMFC and that of the learned Additional Sessions Judge is illegal and perverse. It is contended that there is no complaint, on the basis of which, the charge is framed. It is submitted that the learned JMFC discharged the petitioner from the charge under Section 143 read with Section 149 of IPC. In view thereof, the learned JMFC ought to have discharged the petitioner from the charge of offence punishable under Section 509 of IPC. The learned Counsel for the petitioner has relied on the decision of the Hon'ble Apex Court in the case of **Dilawar Balu Kurane Vs. State of Maharashtra** reported in **(2002) 2 SCC 135**.

5. Mr. Gaurish Nagvenker, the learned Additional Public Prosecutor for the respondents submitted that *prima facie*, there is material to proceed with the trial.

6. Section 509 of IPC reads as under:

“509. Word, gesture or act intended to insult the modesty of a woman. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

7. It appears that there is a complaint wherein the name of the petitioner is specifically mentioned as a person who used filthy language along with other allegations. In such circumstances, it is not the case that there is no material at all against the petitioner to proceed with the trial. I do not see any illegality or perversity in the order passed by the learned JMFC as well as the order passed by the learned Additional Sessions Judge. Insofar as the contention of the

petitioner that there is only complaint on which the learned JMFC proceeded to frame the charge, I do not see any reason to accept the said contention. Even if, there is only complaint and no witnesses, even then, the Court can proceed to frame the charge considering other evidence placed on record. Reliance placed on the judgment in the case of **Dilawar Balu Kurane** (supra) is misplaced. With due respect to the principles laid down in the said citation, the facts are different in the matter before the Hon'ble Apex Court. Here it is not the case that the charges against the petitioner on the very fact of it are redolent of improbability and absurdity and there is not even a remote chance of the charges ultimately culminating into conviction. Hence, I am not inclined to interfere with the order passed by the learned JMFC and the learned Additional Sessions Judge.

8. In the result, the Criminal Writ Petition is dismissed.

M.S. JAWALKAR, J.

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