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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.563 OF 2021 (F)

WITH

CRIMINAL WRIT PETITION NO.57 OF 2022

CRIMINAL WRIT PETITION NO.563 OF 2021 (F)

1. Mr. Tulsidas Gopal Naik
Aged 70 years,
S/o late Mr. Gopal Naik
Occupation Business,
R/o H.No. 289/G, Krishna Kunj Building,
Reginamundi High School,
Chicalim-Gia-403711.

2. Mr. Siddesh Tulshidas Naik
S/o Mr. Tulshidas Naik
Occupation:-Business,
R/o H.No. 289/G, Krishna Kunj Building,
Reginamundi High School,
Chicalim-Gia-403711.

... Petitioners.

Versus

1) State of Goa
Through Public Prosecutor
High Court Complex,
Panaji-Goa

2) Vasco Police Station
Through Police Inspector
Vasco-Da-Gama Goa.

3) Vasco Railway Police Station
Through Police Inspector
Vasco-Da-Gama Goa

4) Sujit Satoskar
R/o H.No. 118/2, Cosme Building,
Sai Auto Mech,
Next to Chicalim Post Office,
Vasco Da Gama Goa.

... Respondents.

Mr. Gaurish Agni, Advocate for the Petitioner.

**Mr. Pravin Faldessai, Additional Public Prosecutor for
Respondent Nos. 1, 2 and 3.**

Ms. Seeja K.S., Advocate for Respondent No.4.

WITH
CRIMINAL WRIT PETITION NO.57 OF 2022

Mr. Sujit Krishna Satoskar,
Age 43 Years, Married
S/o Shri Krishna Satoskar,
Occupation: Business
R/o H. No. 4 / 173 / A / 3,
3rd Floor, The Exotic Casa De Teodomiro,
Near Mangoor Sports Club,
Mangoor Hill, Vasco-da-Gama,
Goa-403802.
Email- sujitsatoskar69@gmail.com,
Mob. No. 8806226191

... Petitioner.

Versus

1. State of Goa,
Represented by the Chief Secretary,
Government of Goa,
Having the Office in Secretariat
At Alto Porvorim
Goa – 403 521.

2. Director General of Police,
Police Headquarters, Goa Police,
Tilak Maidan, Panjim,
Goa – 403 001.

3. Superintendent of Police,
South Goa District Police Headquarters,
Margao, Goa – 403 601.

4. The Police Inspector
Vasco Police Station,
Vasco-da-Gama,
Goa – 403 801.
And

5. The Police Inspector,
Goa Police,
Vasco Railway Police Station,
Vasco-da-Gama,
Goa – 403 801.

... Respondents.

Ms. Seeja K.S., Advocate for the Petitioner.

Mr. S.G. Bhole, Public Prosecutor for the Respondents.

CORAM:	M.S. SONAK, J & BHARAT P. DESHPANDE, J.
RESERVED ON:	06 December, 2022
PRONOUNCED ON:	09 December, 2022

JUDGMENT: (Per Bharat P. Deshpande, J.)

Rule. Rule returnable forthwith.

2. Heard both the matters with consent of the learned Counsels for final disposal.

3. WPCR 563/2021 (Filing) is filed by the Petitioners/Accused with the following prayers:-

A) For a Writ of Certiorari or for a writ in the nature of Certiorari or any other appropriate writ order or direction under Article 226 and 227 of the Constitution of India and Section 482 of the Criminal Procedure

Code, 1973 and quash and set aside the F.I.R. No. 26/2021 dated 18/3/2021.

B) During the pendency of the hearing and final disposal of the above Writ Petition, the Petitioner is entitled for an order restraining the Respondents No.1 to 3 from arresting the Petitioners in pursuance of the FIR No. 26/2021 or from an order protecting the Petitioners from arrest by the Respondents No. 1 to 3 in pursuance of the FIR No. 26/2021.

4. WPCR 57/2022 is filed by the Petitioner/Complainant with the following prayers:-

A. For a Writ of Certiorari or a writ, order or direction in the nature of certiorari, or any other appropriate writ, direction or order, under Article 226 and 227 of the Constitution of India, and Section 482 of the Criminal Procedure Code, 1973 directing the Respondent No. 5 to take immediate action against the accused persons in Crime No. 26/2021 dated 18/3/2021 in accordance with law, conduct search/ raid and retrieve all the stolen items, complete the inventory proceedings of the items presently in the shops, complete the investigation and file the charge-sheet in the appropriate court within 90 days;

B. For a Writ of Certiorari or a writ, order or direction in the nature of certiorari, or any other appropriate writ, direction or order, under Article 226 and 227 of the Constitution of India, and Section 482 of the Criminal Procedure Code, 1973 directing the Respondent No. 4 to take immediate action in accordance with law against the seven offenders for committing the crime on 04/4/2021 and complete all the lawful procedures within 90 days.

C. For a Writ of Certiorari or a writ, order or direction in the nature of certiorari, or any other appropriate writ, direction or order, under Article 226 and 227 of the Constitution of India, and Section 482 of the Criminal

Procedure Code, 1973 directing the Respondents No. 1 to 3 to ensure and monitor that the Respondent No. 4 and the Respondent No. 5 are discharging their official duties in accordance with law.

5. On 15.02.2022, a coordinate Bench of this Court passed the following order:-

“1. This Petition is to be taken up along with Criminal Writ Petition No.103 of 2022 (Filing), instituted by Respondent no.4 herein.

2. Both the matters are to be taken up on 07.03.2022.

3. Ms. Seeja K. S., learned Counsel appearing for Respondent no. 4 in this Petition and for the Petitioner in the connected Petition, states that the entire case papers in the connected Petition will be handed over to Mr. Gawas, learned Counsel, today itself.

4. Despite our order dated 27.01.2022, Mr. Gawas, once again seeks time to file rejoinder. We grant time but subject to payment of costs of ₹5,000/- on or before the next date. The costs will have to be paid to the Goa High Court Bar Association and proof of payment will have to be filed in this Court.

5. Similarly, if the Petitioners wish to file response to the connected Petition, they may do so on or before the next date.

6. Mr. Faldessai, learned Additional Public Prosecutor, states that he will also appear in the connected Petition.

7. Ms. Seeja K. S., learned Counsel, states that copy of the Petition will be served in the office of the learned Advocate General today itself.

8. Stand over to 07.03.2022.”

6. Heard learned Counsel Mr. Gaurish Agni for the Petitioners in WPCR No.563/2021 (Filing), Mr. Pravin Faldessai, Additional Public

Prosecutor for Respondent Nos. 1, 2 and 3 in WPCR No.563/2021 (Filing), Ms. Seeja K.S., Advocate for the Petitioner in WPCR 57/2022 and for Respondent No.4 in WPCR No.563/2021 (Filing) and Mr. S.G. Bhobe, Public Prosecutor for the Respondents in WPCR 57/2022. We have also perused the written submissions filed by both the parties in detail.

7. The Petitioners in WPCR 563/2021 (Filing) is basically praying for quashing of FIR No.26/2021 dated 18 March 2021 on the ground that the dispute is basically a civil dispute and that initially the complaint lodged by Respondent No.4 therein was considered as non-cognizable case, however, due to some pressure on the police officer, he registered it as an offence under Section 448, 380, 341 r/w 34 IPC.

8. Learned Counsel Mr. Gaurish Agni appearing for the Petitioners submitted that there is an agreement of leave and licence executed between the Petitioner and Respondent No.4 dated 17 April 2017. The said leave and licence agreement is in respect of a shop to be used for commercial purposes for a monthly compensation of ₹10,000/-. The term of licence commenced on 1 April 2017 and it was valid for a period of 11 months. He submitted that even though the said licence expired in February 2018, Respondent No.4 continued to conduct business in the said shop till January 2020. There was no further agreement of leave and licence from March 2018. It was further argued by the learned Counsel Mr. Agni that the said shop was surrendered by Respondent No.4 between 5th to 8th February 2020 and since then the Petitioner is in possession of it.

However, subsequent to the Petitioner occupying the said shop, a criminal complaint was lodged by Respondent No.4 on 9 February 2020 at Vasco Police Station thereby falsely alleging that Petitioner took forcible possession. Respondent No.4 then lodged more complaints dated 10 February 2020 and 18 February 2020 making allegations on the same line. Vasco Police after conducting due inquiry on all the said complaints noted that the matter was of civil nature and no cognizable offence was made out. Accordingly, Respondent No.4 was asked to approach appropriate forum for redressal of his grievance.

9. Learned Counsel Mr. Agni then claimed that inspite of considering such complaints as being civil in nature and specifically observing that there is no cognizable offence made out, on 18 March 2021 suddenly an FIR was registered against the Petitioner for the offences punishable under Section 341, 380, 448 r/w 34 IPC, on the same allegations/complaints levelled by Respondent No.4 in his first complaint dated 9 February 2020.

10. The learned Counsel Mr. Agni then pointed out that registration of FIR on 18 March 2021 was only after temporary injunction application filed by Respondent No.4 claiming possession of the said shop from the Petitioner was rejected by the civil Court vide its order dated 18 February 2021.

11. The learned Counsel Mr. Agni claimed that once the complaint of Respondent No.4 was treated as non-cognizable complaint, concerned police officer of Vasco Police Station had no jurisdiction to

reopen it and register FIR on the same allegations without obtaining permission from the concerned Magistrate.

12. Per contra, Mr. Pravin Faldessai, Additional Public Prosecutor, appearing for the Respondent/State would submit that communication and the observations of Vasco Police Station as relied upon by the Petitioner is not amounting to recording of non-cognizable case. He submitted that the concerned officer must record such facts in the register maintained at the police station for non-cognizable cases and forward copy of it to the concerned Magistrate. Only then the provisions of Section 155 of Cr.P.C. comes into play. According to Mr. Pravin Faldessai, in the present matter, since the complaint dated 9 February 2020 was not registered as NC complaint in the register maintained by Vasco police, the police officer was entitled to subsequently register FIR and investigate the matter.

13. The learned Counsel Ms. Seeja K.S. Appearing for Respondent No.4 vehemently argued that it is not a civil dispute and that initially, Vasco police were reluctant to register FIR and therefore, Respondent No.4 had to approach the Superintendent of Police under Section 154(3) of Cr.P.C. and only thereafter, FIR was registered. She submitted that there are eyewitnesses who disclosed commission of theft and removal of various items from the shop by the Petitioner and therefore, FIR has been rightly registered. She then submitted that since Vasco Police Station registered the complaint though after some delay, investigation is not progressing and therefore, Respondent No.4 is required to approach this Court by filing WPCR No.57/2022 with the prayers that such investigation be monitored by

this Court and directing the police officer to file the charge-sheet. She then submitted that Respondent No.4 due to illegal acts on the part of Petitioner suffered heavy loss as valuable items kept in the said shop were stolen away by the Petitioner and Respondent No.4 was thrown out of the shop without due process of law. She further submitted that Respondent No.4 was required to approach various authorities due to non-cooperation from Vasco police and even the present investigating officer.

14. The rival contentions raised in both these matters now fall for our consideration.

15. In the case of *M/s. Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others*¹, the Apex Court after considering all earlier decisions, has observed in para 10 as under:-

“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare

¹ AIR 2021 SC 1918

cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to

complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.PC. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.PC., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

11. Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482 Cr.PC. before it and in what circumstances the High Court would be justified is a further core question to be considered.

Before passing an interim order of staying further investigation pending the quashing petition under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, the High Court has to apply the very parameters which are required to be considered while quashing the proceedings in exercise of powers under Section 482 Cr.P.C. in exercise of its inherent jurisdiction, referred to hereinabove.

12. In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.”

16. Keeping in mind above settled proposition of law while exercising powers under Section 482 of Cr.PC. together with Article 226 of the Constitution of India, the matter in hand needs to be considered.

17. The first complaint lodged by Respondent No.4 is dated 9 February 2020 thereby complaining of unlawful locking and painting of shops/workshop. It is necessary to reproduce the contents of such complaint as subsequently two other complaints were lodged wherein some more details were added. The complaint dated 9 February 2020 reads thus:-

“From

Sujit SatoskarComplainant
Sai Auto Mech,
Next to Chicalim Post Office,
Chicalim, Vasco-da-Gama, Goa.
Mobile: 8806226191

 $To,$

*The Police Inspector
Goa Police, Vasco Police Station,
Vasco Da Gama, Goa.*

Date: 09th February 2020

Sub: Complaint due to unlawfully locking & Painting of shops/workshop

Respected Sir,

1. This is to bring to your kind attention that we have a workshop for car repairs in the Name & Style of Sai Auto Mech at the aforesaid address and also another shops/workshop with address: **Sai Auto Spares, Shop No.1 & 2, Naik Building, Nr. Tiger Garage, Chicalim, Goa.** However, me and my employees went to the Sai

Auto Spares, shop No.1 & 2 at Naik Building, Nr. Tiger Garage today @ 1200 Hrs, it was found the following discrepancies;

- a) In Shop No. 1, one additional lock was put and*
- b) In Shop No. 2, the lock of the Complainant was cut and removed and, in the place, another lock was put*
- c) Both the shutters are repainted as “G.K. NAIK & SONS GODOWN”.*

2. On inquiry it is understood that unlawfully the lock was cut and shops were put with new locks and also re-painted by Mr. Siddesh Naik, S/o. Mr. G.K. Naik along with his persons. The detail complaint in this regard follows as the Complainant has stored auto spares and other materials worth lakhs of rupees in the Shop No.2.

Thanking you,

Yours faithfully,

sd/-

(SUJIT SATOSKAR)”

18. Respondent No.4 then filed another complaint dated 10 February 2020 (Exh. P-7) followed by third complaint dated 18 February 2020.

19. The record shows that P.S.I. Vasco issued call letter to the Petitioner on 12 February 2020 asking him to remain present on 13 February 2020 in connection with a complaint filed by Respondent No.4. The Petitioner vide his letter dated 18 February 2020 addressed to P.I. Vasco submitted his clarification to the allegations made against him by Respondent No.4.

20. The learned Counsel Mr. Agni pointed out that P.I. Vasco vide his report dated 23 April 2020 informed Sub-Divisional Police Officer

Vasco that upon inquiry into the complaint filed by Respondent No.4 against the Petitioner on various dates, necessary inquiry was conducted and a conclusion is recorded in para 5 as under:-

“5) CONCLUSION: It is submitted that, the matter is of civil in nature and no cognizable offence is made out, and applicant may approach proper court of law for redressal for his grievances. The petitioner has been intimated accordingly.”

21. Learned Counsel Mr. Agni then pointed out that vide letter dated 23 February 2020, P.S.I. Vasco Police Station informed Respondent No.4 as under:-

“
No:- PI/VSC/3310/2020
Vasco Police Station,
Dated:- 23/2/2020.

To,
Mr. Sujith Satoskar,
c/o. Sai Auto Mech,
Next to Chicalim Post Office,
Chicalim, Vasco da Gama, Goa.

Sub: Intimation....

Kindly refer your application dated 09/02/2020, 10/02/2020 and 18/02/2020. Enquiry into your applications revealed that matter is civil in nature and no cognizable offence is made out. You may approach proper court of law for redressal of your grievances, if you desire.

Sarvesh R. Sawant, PSI
sd/-
Vasco Police Station.”

22. Learned Counsel Shri Agni therefore was right in making submission that complaints dated 9 February 2020, 10 February 2020 and 18 February 2020 of Respondent No.4 were treated as non-cognizable cases as the matter pertains to civil nature. He was therefore informed to approach the proper court of law for redressal of his grievances.

23. The learned Counsel Mr. Agni was therefore justified in arguing that once the allegations in the complaint filed by Respondent No.4 are considered as non-cognizable offences, provisions of Section 155 of Cr.P.C., 1973 comes into effect and unless the concerned police officer obtains permission from the learned Magistrate, he is not empowered to investigate such non-cognizable case.

24. Section 155 of Cr.P.C. reads thus:-

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

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(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) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(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.”

25. Perusal of the above provision clearly goes to show that when the officer in-charge of a police station considers any complaint as non-cognizable and enters or cause to be entered the substance of information in a book to be kept by such officer in such form as the State Government may prescribe and refer the informant to the Magistrate, he is not entitled to investigate into such matter without the order of a Magistrate.

26. Mr. Faldessai would submit that in the present matter, the procedure as contemplated in Section 155(1) was not followed by Vasco Police Station as such information was not entered into the book prescribed and maintained at the police station and therefore, the provisions of Sub-section (2) of Section 155 of Cr.P.C. shall not be applicable.

27. We are unable to accept such contention raised by Mr. Faldessai for the simple reason that the officer in-charge of Vasco Police Station definitely formed an opinion on three letters/complaints addressed by Respondent No.4 dated 09/02/2020, 10/02/2020 and 18/02/2020 and that too after conducting an inquiry and came to the conclusion that said dispute is civil in nature and no cognizable offence is made out. Officer in-charge of Vasco Police Station then intimated Respondent No.4 about his opinion which is already quoted above vide letter dated 23 February 2020. Only because

officer in-charge of Vasco Police Station did not enter such information into the book maintained for that purpose, the opinion of the in-charge of Vasco Police Station that no cognizable offence is made out cannot be ignored or altered on the precise ground that such information was not recorded in the N.C. register. Similarly, maintaining such register/book is a procedural aspect and it is for the in-charge of the police station to do so. Such argument is of no good to claim that in-charge of Vasco Police Station did not record the substance of such information in the said book and therefore, opinion of said in-charge of Vasco Police Station is of no substance and could be altered subsequently. It is the duty of the in-charge of the police station to record the substance of information in such book and refer the informant to the Magistrate. However, before recording such substance of information in the said book, the in-charge has to form an opinion that there is no cognizable case made out, which is of importance and not only the recording of such information in the book.

28. In the present matter, not only opinion of the in-charge of Vasco Police Station was formed, but Respondent No.4 was intimated in writing that contents of his complaint are clearly of civil nature and no cognizable offence is made out. Similarly, Respondent No.4 was asked to approach the court of law for redressal of his grievances. To our mind, the ingredients of Section 155(1) of Cr.P.C. are substantially complied with. Thus, it cannot be said that failure on the part of the in-charge in recording such information in the book kept for recording non-cognizable cases, gives further right to

the in-charge to change his opinion already formed and recorded and further conveyed to the informant, without complying with the provisions of Section 155(2) of Cr.P.C.

29. It is not an empty formality but certain rights accrue in favour of the said party against whom complaint or allegations are made. The word “*shall*” used in Sub-section (2) of Section 155 of Cr.P.C. clearly shows the intention of the Legislature and mandate that the police officer shall not investigate a non-cognizable case without orders of the Magistrate having power to try such case. Therefore, once an opinion is formed in writing and conveyed to the informant that his case is non-cognizable case, the in-charge of the police station is certainly precluded from carrying out any further investigation in such non-cognizable case/complaint without the order of the jurisdictional Magistrate. There is a specific purpose for which Sub-section (2) of Section 155 is introduced. Such purpose cannot be taken away only by saying that the officer in-charge did not record substance of information of non-cognizable case in the book maintained in the police station.

30. In the present matter, the provisions of Section 155(2) of Cr.P.C. are squarely applied and therefore, any subsequent investigation by in-charge of Vasco Police Station in connection with earlier complaints filed by Respondent No.4 and considered as non-cognizable cases, could not have been investigated without the order from jurisdictional Magistrate.

31. The learned Counsel Mr. Agni then pointed out the notings of P.I. Vasco Police Station (Annexure S-22) which reads thus:-

“No.PI/VSC/ /2021
Vasco Police Station,
Dated:- .03.2021.

Submitted

1) Placed in the file an application dated 09/02/2020 filed at Vasco Police Station Annexure “A” wherein in the said application the applicant Shri, Sujit Satoskar has stated that, he has workshop for car repairs in the name & Style of SaiMech at the aforesaid at Sai Auto Mech, Next to Chicalim post Office, Chicalim, Vasco-da-Gama, Goa and another shops/workshop with address, Sai Auto Spares, Shop No. 1 & 2, Naik Building, Nr. Tiger Garage, Chicalim, Goa and that on 09/02/2020 applicant found out at Sai Auto Spares, Shop No.1, one additional lock was put and in Shop No. 2 the lock of the Complainant was cut and removed another lock was put and both the shutters are repaired as “G.K. Naik & Sons Godown”. Thereafter on enquiry by applicant, it is understood that above act was done by Mr. Siddesh Naik s/o. Mr. G.K. Naik along with his persons. The applicant also stated that he stored auto spares and other materials worth lakhs of rupees in the Shop No. 2.

2) It is submitted both the parties were called at the Police Station and during enquiry it is revealed that Mr. Tulshidas Naik, proprietor of M/s. G. K. Naik & Sons, Cloth Merchant, Vasco da Gama, Goa is the owner of Shop No.1 & 2, Naik Building, Nr. Tiger Garage, Chicalim, Goa and Mr. Siddesh Naik is the son of Mr. Tulshidas Naik. That Mr. Tulshidas Naik had given the said 2 shops on leave and licence basis to the Applicant vide agreement of Leave and Licence dated 01/05/2015. After expiry of said agreement in the year 2016, there was no new agreement entered between the parties and in absence of any fresh agreement applicant continued to use the two shop premises and continued to pay the prescribed rent. That in the month of December 2018 applicant stopped paying rent hence opponent requested

the applicant to vacate the shop premises. Further on 25/01/2020, opponent Mr. Tulshidas Naik issued legal notice to the applicant to pay outstanding dues of Rs.300000/- within a period of 8 days, which is not replied by the applicant.

3) It is submitted that since the matter was of civil in nature, both the parties were advised to settle the matter between themselves, for which both the parties had agreed and left the Police Station.

*4) Thereafter, the applicant had filed an another application dated 18/02/2021 Annexure "B" wherein he has mentioned in his application that his auto spares and material worth Rs 50 lakhs has been stolen, when the applicant and his employees went to the aforesaid shop on 09/02/2020 at about 12.00 hrs and he was shocked to see the said shop was criminally trespassed, broke open the shutter locks, and prima facie the theft has taken place. **However the applicant did not mentioned in his earlier application dated 09/02/2020 regarding theft of his auto spares and material worth Rs 50 lakhs has taken place.***

5) It was subsequently learnt that, in the same matter the applicant Sujit Satoskar had filed a Regular Civil Suit vide No. 20/2020/D seeking interim mandartory injunction directing defendants their agents servants to hand over peaceful & complete possession of the suit premises alongwith all the goods and material stored inside to the applicant.

6) The Hon'ble Court dismissed the Regular suit filed by the petitioner. The copy of the same is placed at Annexure "C".

7) Now the petitioner has been making rigorous allegations against the undersigned and other officers for not registering FIR in respect to the complaint filed by him.

8) The petitioner has been making allegations against Vasco Police to each & every forum to bring pressure on the Police to register the offence against Mr. G.K.Naik and his son Siddesh Naik.

9) But one point is to be noted that the petitioner has not filed u/s 156 (3) Cr.P.C. application before the Hon'ble Court. But he has resorted to filing of petition to the superiors in the matter.

10) In view of above, in order to get the truth out of the matter, we may register the FIR and investigate the same and bring it to logical conclusion.

11) Since the complainant has been making allegations that the local (Vasco) Police have sheltered the opponent, after registration of FIR we may hand over the investigation to any other P.I. from Vasco Sub-Division for further investigation and disposal.

Yours faithfully

sd/-
(Nilesh S. Rane)
Police Inspector
Vasco Police Station

12) S.D.P.O. Vasco Discuss

13) PI Vasco As discussed and instructed FIR vide No. 26/2021 u/s 448, 380, 341 r/w 34 I.P.C. has been registered on 18/03/2021.

The copy of the FIR along with the complaint dtd 18/2/2020 is placed opposite in the file. May please decide as requested in para 11 above.

sd/-
PI Vasco

14) SDPO Vasco Since the complainant is making allegations against the local police officers of Vasco Police Station, if approved, we may hand over the case to PI Vasco Rly Police Station for further investigation.

15) SP/S Appd. sd/-

SDPO Vasco Put up note along with all Case Papers
sd/-

PI Vasco As desired note is placed in the file. May please sign the same if found correct. Similarly one file containing the original FIR, complaint and all previous correspondence have been placed separately duly indexed.
sd/-

SDPO Vasco sd/-

PI Vasco"

32. Learned Counsel Mr. Agni then submitted that only because wild allegations were levelled against police officers including the higher officers, in-charge of Vasco police was under pressure and therefore, he submitted the said notings. However, in said notings, there is absolutely no whisper about obtaining permission from the jurisdictional Magistrate to reopen the non-cognizable case registered earlier. Similarly, there is absolutely no discussion in the entire notings that allegations made by Respondent No.4 show ingredients of any cognizable offences.

33. Learned Counsel Ms. Seeja appearing for Respondent No.4 vehemently argued that since Vasco Police Station was unable to register FIR on three complaints filed by the said Respondent, she approached Superintendent of Police under Section 154(3) of Cr.P.C. and only thereafter, FIR was lodged.

34. Ms. Seeja, learned Counsel for Respondent No.4 would therefore submit that the opinion formed, if any, by the in-charge of Vasco Police Station about non-cognizable case, would not come in way of the Superintendent of Police in directing registration of FIR under Section 154(3) of Cr.P.C. She heavily placed reliance on the notings of P.I. Vasco and thereafter, of the SDPO, Superintendent of Police respectively in Annexure S-22 (quoted above). She, therefore, would submit that registration of FIR against Petitioner was on the directions of S.P. South under Section 154(3) Cr.P.C. and for doing so, permission of the Magistrate as provided under Section 155 of Cr.P.C. is not required.

35. It is no doubt true that provisions of Section 154(3) of Cr.P.C. empower the Superintendent of Police to direct investigation in the matter as provided under the Code by any subordinate officer. However, before doing so, his satisfaction in connection with allegations made in the complaint are necessary.

36. Section 154(3) of Cr.P.C., which is relevant for deciding present matter is quoted below:-

“Section 154-

(1).....

(2)

(3) - Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either

investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

37. A perusal of the above-quoted provision shows that any person who is aggrieved by refusal on the part of officer in-charge of the police station to record the information referred to in Sub-section (1) may send the substance of such information in writing or by post to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of cognizable offence, shall either investigate the case himself or direct the investigation to be made by any police officers subordinate to him.

38. Thus, first of all, satisfaction of Superintendent of Police that such information discloses commission of cognizable offence is must. Without such satisfaction, the Superintendent of Police is not empowered either to investigate himself or to direct such investigation to be made by any officer subordinate to him for the simple reason that such information is already considered by the in-charge of the police station as non-cognizable offence.

39. The learned Counsel Ms. Seeja was unable to point out any such observation in writing recorded by the Superintendent of Police, South Goa in the notings (Annexure S-22) quoted above. However, she submitted that the Superintendent of Police directed in-charge of Vasco Police Station on phone to register FIR and then investigate the matter.

40. We are unable to accept that without recording such opinion in writing, the Superintendent of Police is entitled to instruct orally the investigating officer or the in-charge of the police station to register FIR and investigate the matter. The wordings of Section 154(3) of Cr.PC. as quoted above are very specific.

41. The notings at Annexure S-22 quoted above and more specifically observations of P.I. Vasco at Serial Nos.3, 4 and 7 to 11 clearly go to show that such notings were placed only because Respondent No.4 started making allegations against Vasco Police Station. In such notings, the P.I. Vasco nowhere opined that the allegations made in the complaint dated 9 February 2020, 10 February 2020 and 18 February 2020 made out any case for cognizable offences. The above note did not disclose the date, but it shows that it was prepared in the month of March and somewhere on 16 March 2021. It was then placed before the Sub-Divisional Police Officer, Vasco who only put his endorsement "*discuss*". Thereafter, the said note was again returned to P.I. Vasco who put his notings and recorded that as discussed and instructed, FIR vide No. 26/2021 under Section 448, 380, 341 r/w 34 IPC has been registered on 18 March 2021.

42. The said notings were then circulated to Sub-Divisional Police Officer, Vasco who then put his notings/remarks that since the complainant is making allegations against the local police, the case may be handed over to P.I., Vasco Railway Police Station for further inquiry. This remark of SDPO, Vasco was then placed before the

Superintendent of Police, South on 19 March 2021, which he approved.

43. Thus, there is absolutely no record to show that the Superintendent of Police was satisfied that the information disclosed by Respondent No.4 showed commission of cognizable offence, as provided under Section 154(3). The Superintendent of Police, South only approved the remarks/notings of SDPO, Vasco to transfer the said FIR/case from Vasco Police Station to P.I., Vasco Railway Police Station.

44. It is therefore clear that complaint lodged by Respondent No.4 and forwarded to Superintendent of Police, South was never entertained under Section 154(3) Cr.P.C. and more so no directions on the basis of any satisfaction were given to the in-charge of the police station. Thus, the submissions of the learned Counsel for Respondent No.4 on the above aspect cannot be accepted.

45. From the above material, one thing is very clear that complaints filed by Respondent No.4 at Vasco Police Station on 9 February 2020, 10 February 2020 and 18 February 2020 were considered as non-cognizable cases and Respondent No.4 was directed to take necessary recourse by approaching the proper authority. Admittedly, Respondent No.4 did not file any proceedings under Section 156(3) of Cr.P.C. before the concerned Magistrate.

46. Subsequent registration of FIR on the same allegations and that too on 18 March 2021, in our opinion, is by flouting the mandatory provisions of Section 155(2) of Cr.P.C. Once the opinion is formed

and recorded by the in-charge of the police station that the complaint shows non-cognizable case and accordingly the informant is intimated, the in-charge of police station is not entitled to reopen or to change his opinion and register FIR on the same allegations and start investigating the matter, without obtaining an order in that regard from the jurisdictional Magistrate. Thus, the FIR dated 18 March 2021 registered against the Petitioner is clearly abuse of process of law and by flouting the provisions of Section 155(2) of Cr.PC. and therefore is to be quashed and set aside.

47. The learned Public Prosecutor Mr. Bhobe submitted that the petition filed by the complainant is not maintainable. In this respect, he placed reliance in the case of ***Sakira Vasu v. State of Uttar Pradesh and Ors.***². The Apex Court while considering provisions of Section 156(3) of Cr.PC., held in para No.17 as under:-

“17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.”

48. In the case of ***Raju Bhagwat Zankar v. The State of Maharashtra & Ors.***³, a division Bench of this Court at Principal Seat has observed in para 2 as under:-

² (2008) 2 SCC 409

³ 2018 SCC OnLine Bom 6793

“2. During the course of the hearing of the above Petition, the learned Addl. P. P. Mrs. Deshmukh has submitted a report of the Police Inspector, Anti-Corruption Bureau, Thane, dated 20/03/2018 which sets out the reasons as to why the ACB is not registering the FIR against the Respondent No.5. In view of the situation arising out of the refusal of the ACB to register an FIR under the Prevention of Corruption Act, 1988, the Judgments of the Apex Court in the case of Lalita Kumari v. Government of Uttar Pradesh; (2014) 2 SCC 1, as also the Judgment of the Apex Court in the case of Aleque Padamsee and Others v. Union of India; (2007) 6 SCC 171 and the Judgment of the Apex Court in the case of Sakiri Vasu Vs. State of U.P.; (2008) 2 SCC 409, were in contention before us. It is not necessary for us to refer to in detail the law which has been settled by the aforesaid Judgments. Suffice it would be to state that insofar as the proposition of law that where the police refuse to register an FIR, the party can be relegated to the remedy by way of an Application under Section 156(3) of the Cr. P. C., as laid down in Aleque Padamsee and Sakiri Vasu (supra) cannot be said to be denuded in any manner. In view thereof, we do not deem it appropriate to exercise our writ jurisdiction under Article 226 of the Constitution of India for granting the relief which is sought by way of the above Writ Petition. However, we relegate the Petitioner to the remedy of filing a complaint under Section 156(3) of the Cr. P. C. before the appropriate Court. Needless to state that the said remedy can be availed of by the Petitioner in accordance with law. Further, needless to state that the complaint, if filed, would be decided on its own merits and in accordance with law.”

49. In the case of *Aleque Padamsee and Others v. Union of India and Others* (supra), the Apex Court observed in para no. 6 that when powers are given to a specific authority under Section 156(3) of Cr.P.C., writ petition for inaction on the part of police to properly

investigate the matter is not to be entertained and the party must be directed to approach concerned Magistrate for the purpose of necessary directions to the officer in-charge of the police station.

50. All the above decisions are squarely applicable to the matter in hand and specifically WPCR No.563/2021 (Filing). Be that as it may, since we have already observed that FIR dated 18 March 2021 is registered without following the procedure under Section 155(2) of Cr.PC. and registration of such FIR in a case recorded as non-cognizable offence, without the order of jurisdictional Magistrate, amounts to abuse of process of law.

51. Since we have concluded that the FIR dated 18 March 2021 is required to be quashed and set aside, the prayers in WPCR No. 57/2022 do not survive.

52. WPCR No. 563/2021 (Filing) needs to be allowed as per prayer clause (A).

53. Rule is made absolute in terms of prayer clause (A) in WPCR No.563/2021 (Filing).

54. WPCR No.57/2022 becomes infructuous in view of making of Rule absolute in the above Writ Petition.

55. Though we have allowed WPCR No.563/2021(Filing) and disposed of WPCR No.57/2022, we clarify that nothing in this order will preclude Respondents from proceeding further in this matter in accordance with law in terms of provisions of Sections 154, 155 and 156 of Cr.PC. Accordingly, all contentions of parties on the merits or

demerits of their complaints/defences are kept open. We have quashed the impugned FIR because according to us, the provisions of Section 155(2) Cr.PC. were not followed in this case. Similarly, we have declined relief in WPCR No.57/2022 because according to us the Petitioner in the said petition would have alternate and efficacious remedy under Section 156(3) of CrPC. Therefore, the clarification and liberty.

56. The Rule is disposed of in both the petitions in the above terms. However, the parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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