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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.32 OF 2022

1. Mr. Ankit Kumar,
36 years of age, S/o. Sunil Kumar,
C.E.O. of M/s. Sanatan Financers &
Real Estates Pvt. Ltd.,
R/o. Flat no.501/502, Block IV,
Kurtarkar Landmark Building,
Gogol, Margao-Goa

2. Mr. Sunil Kumar,
67 years of age,
S/o Anand Kumar,
R/o. House no.107, Peace Valley,
Deumol, Sirvoi,
Quepem Goa.

...Petitioners

Versus

1. Officer-in-charge,
Police Inspector,
Quepem Police Station,
Quepem-Goa.

2. Mr. Dmitry Suprunyuk
Director of M/S Celsia Holiday Homes Pvt
Ltd.,
H. no.42, Apt. 59, 60 let Oktyabrya,
Street, Nizhnevartovsk,
Tyumen Region, 628600,
Russia Federation.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for the Respondent No.1.

CORAM: M. S. SONAK &

BHARAT P. DESHPANDE, JJ.

DATED : 28th NOVEMBER, 2022

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

Rule. Rule made returnable forthwith. The matter is taken up for final disposal at the admission stage with the consent of the learned counsel for the parties.

2. Heard Shri Ashwin D. Bhobe, learned counsel for the petitioner and Mr. Pravin N. Faldessai, Additional Public Prosecutor for the State.

3. Petitioner is praying for the reliefs as under:-

'a) For an order calling for the records and proceedings of impugned FIR bearing no.86/2017 dated 19/09/2017, registered by the Respondent No.1 at the Quepem Police Station, Quepem and upon perusing the same be pleased to quash and set aside the impugned FIR no.86/2017.

b) For an order staying further investigation in the impugned FIR no.86/2017 by the Respondent No.1 and further restraining the Respondent No.1 from taking coercive steps and/or coercive action against the Petitioners on the basis of the impugned FIR No.86/2017.'

4. Learned counsel Shri Bhobe appearing for the petitioner submit that the petitioners are real estate developers and also Directors of M/s. Sanatan Financers & Real Estate Pvt Ltd., who undertook construction of scheme known as Peace Valley at Quepem wherein they constructed flats, apartments, villas for the purpose of sale. He then submitted that agreement of sale were executed with different Indian companies wherein some foreigners were Directors. Execution of final sale deeds with such companies were pending on account of completion of necessary legal formalities under Foreign Exchange Management Act.

5. Learned counsel Shri Bhobe then submit that respondent no.2 filed a complaint at Quepem Police Station which was registered at FIR No.86/2017 for the offence punishable under Section 420 r/w IPC 34(c) claiming therein that the petitioner cheated respondent no.2 and his Company. Similar complaints were filed by other 2 foreigners which were separately registered at FIR No.86/2017 and

FIR No.13/2018, both under Section 420 of IPC r/w 34 of IPC. He then submits that allegations in all 3 FIRs were similar in nature.

5. Learned counsel Shri Bhobe would submit that Sub-Divisional Officer, Quepem conducted enquiry in connection with all 3 complaints and came to the conclusion that disputes raised therein are purely civil in nature and therefore Investigating Officer of Quepem Police Station filed 'A' Summary proceedings in all 3 matters before the learned Magistrate at Quepem.

6. Learned counsel Shri Bhobe then submits that 'A' Summary proceedings filed in connection with FIR No.86/2017 was registered at Final Report no.27/2018 before the learned Magistrate at Quepem. The other 2 Final Summary Reports with the request for grant of 'A' Summary were allowed by the learned Magistrate. However, the Investigating Officer of Quepem Police Station filed an application before the learned Magistrate to permit him to withdraw Final Report No.27/2018 (FIR No. 86/2017) and, accordingly, such prayer was allowed.

7. Learned counsel Shri Bhobe then submits that after withdrawal of Final 'A' Summary from the learned Magistrate, the

said FIR no.86/2017 was taken up for further investigations and till date there is no progress at all. The complainant in the said matter being a foreign national is not co-operating and therefore police authorities are not doing any further investigation in the matter. He then submitted that the said FIR No.86/2017 was then transferred to Enforcement Directorate who registered Enforcement Case Information Report (ECIR) dated 02.01.2020 under the provisions of Money Laundering Act, 2002 against M/s. Sanathan Financers & Real Estate Pvt Ltd alongwith the petitioners. However, there is absolutely no progress in the said matter.

8. Affidavit-in-reply filed by Quepem Police Station show that though a complaint was registered on 19.09.2017 filed by respondent no.2 against the petitioners, 'A' Final Report was submitted to the JMFC. However, such 'A' Final Report was withdrawn and thereafter the matter was transferred to Economic Offence Cell Panaji for further investigation wherein investigation is still pending.

9. It is clear from the documents produced at Exhibit 'J' Colly that Economic Offence Cell took up the said investigation and accordingly, a separate complaint was lodged on 21.08.2020 by the

PI of Economic Offence Cell which is registered vide FIR No.5/2020 at Economic Offence Cell Police Station, North Goa.

10. Mr. Faldessai, learned Additional Public Prosecutor fairly submits that after the withdrawal of 'A' Final Summary from Quepem Court, there was no progress in connection with FIR No.86/2017 filed on the basis of complaint lodged by respondent no.2. Subsequently, the said FIR was transferred to Economic Offence Cell and in-charge of the Police Station lodged as under complaint dated 21.08.2020. Therefore, he submit that FIR No.86/2017 no longer survives.

11. Though the main petition mentions about lodging of FIR No.5/2020 by the Economic Offence Cell, the prayer in the petition as quoted above, nowhere seek any relief of quashing of FIR No.5/2020 registered at Economic Offence Cell. Therefore, we are unable to consider such relief in favour of petitioner. Secondly, the allegations in the complaint dated 21.08.2020 show that not only the offence of cheating is involved, but there is possibility of enforcement of the provisions of Money Laundering thereby amounting to money laundering since some of the foreigners invested thereby huge amounts in Indian Companies for the

purpose of purchasing flats in Quepem. A copy of FIR No.5/2020 only speaks about offence under Section 120B, 420 of IPC and not in connection with the offence covered under money laundering.

12. The fact remains on record that FIR No.86/2017 registered at Quepem Police Station remains on record and no investigation has been carried in it till date. Report of the Sub-Divisional Police Officer clearly shows that it was a civil dispute in which attempt was made to convert it into a criminal offense.

It is now well settled that powers of this Court under Section 482 of CrPC though extraordinary in nature, could be exercised so as to quash the FIRs which are practically considered to be civil disputes.

14. In the case of *M/s Neeharika Infrastructure Pvt. Ltd. V/s. State of Maharashtra and others*¹ the Supreme Court has observed in paragraph 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

¹ AIR 2021 SC 1918

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 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.P.C. 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.P.C., 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.

15. Keeping in mind the above settled proposition of law which emerges from all earlier decisions, first thing is very much clear that in FIR No.86/2017, there is already a report given by the Sub Divisional Officer of Quepem that it was a civil dispute. Even Final Report for grant of 'A' Summary was filed before the Quepem Court and then it was subsequently withdrawn. However, fact remains that complaint lodged by respondent no.2 discloses that it is a civil dispute and specifically in connection with the sale and purchase of flats in the project which the petitioner was constructing.

16. The learned Additional Public Prosecutor fairly concedes that there was no progress in FIR No.86/2017 even from the date of withdrawal of 'A' Summary proceedings as neither the complainant nor any other witnesses came forward to support the contentions in the complaint. He further admitted that even though separate FIR under No.5/2020 was registered by Economic Offence Cell Panaji, there is no progress. However, we are not inclined to consider any relief in favour of petitioner in connection with FIR No.5/2020 registered with Economic Offence Cell, Panaji Police Station for the simple reason that there is no such prayer in the petition and secondly, the Economic Offence Cell Panaji Police Station is not a party respondent in the proceedings.

17. Considering the fact that FIR No.86/2017 registered at Quepem Police Station did not progress at all as far as investigation is concerned and the Sub-Divisional Police Officer observed that it is a civil dispute, we deem it fit and proper to quash and set aside such FIR No.86/2017 dated 19.09.2017 registered at Quepem Police Station under Section 482 of CrPC as continuance of such FIR is clearly an abuse of the process of law and no purpose would be served.

18. The petition therefore deserves to be allowed as per prayer clause (a) as quoted above.

19. We make it clear that we have not considered anything about FIR No.5/2020 registered at Economic Offence Cell Panaji Police Station for the reason stated above.

20. Rule is made absolute as per prayer clause (a).

21. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

MARIA
SUZANA
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