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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.17 OF 2022

1. Mr. Vikesh K. Harmalkar,
42 years of age,
Son of K. Harmalkar,
Resident of House no. 56/3,
Near Hotel Spice Goa,
Karaswada,
Mapusa, Bardez – Goa.

2. Mr. Umesh Eknath Kambli,
44 years of age,
Son of Eknath Kambli,
Resident of House no.956,
Piquen, Peddem,
Anjuna, Bardez – Goa. ... Petitioners.

Versus

1. Officer-in-charge/
Police Inspector,
Mapusa Police Station,
Mapusa-Goa.

2. State
Through Mapusa Police Station,
Mapusa-Goa.

3. Mr. Mariano Victorino D'Souza alias
Victor Baptista D'Souza alias
Victor D'Souza,
Major of age,
S/o. Late Mr. Baptista D'Souza
R.o. C/o. Mr. Anthony Fernandes,
House no. 61,
Mainath Bhatti, Arpora,
Bardez – Goa. ... Respondents.

Mr. A.D. Bhobe with Ms. S. Shaikh, Advocates for the Petitioner.

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

Mr. Jayant Karn, Advocate for Respondent No.3.

CORAM:	**M.S. SONAK, J & BHARAT P. DESHPANDE, J.**
RESERVED ON:	**7 September, 2022**
PRONOUNCED ON:	**19 September, 2022**

JUDGEMENT: ***(Per Bharat P. Deshpande, J)***

Rule. Rule returnable forthwith.

2. With consent of the parties, matter is taken up for final disposal at the admission stage itself.

3. The Petitioners before this Court are challenging the FIR No.294/2020 registered at Mapusa Police Station/Respondent No.1 herein, at the instance of Respondent No.3 Mr. Mariano, for the offences punishable under Sections 419, 465, 466, 193, 200, 467, 468, 471, 472, 420 r/w Section 34 of IPC.

4. In a nutshell, it is the contention of the Petitioners that said FIR lodged by Respondent No.3 and registered by Respondent No.1 is clearly an abuse of the process of law, does not disclose any commission of cognizable offence qua the Petitioners, attempts to give criminal flavour to a civil dispute. With these submissions, the Petitioners prayed in the present petition for quashing of FIR No.294/2020.

5. Notice was issued to the Respondents and accordingly Respondent No.3 appeared and filed reply affidavit. Vide order dated 18.09.2021, Respondent No.1 was directed to furnish a report in sealed cover indicating briefly the particulars of material collected in the course of investigation in support of the complaint relating to forgery and other offences, if any, as well as comment on the prospect of filing of charge-sheet under Section 173(2) of the Code of Criminal Procedure.

6. Respondent No.1 accordingly filed report in a sealed envelope. On perusal of such report, it reveals that the Investigating Officer submitted about the progress of investigation and commented that some more documents are required to be verified. Therefore, in the report, there is nothing specific as to the offences relating to forgery and other offences qua the Petitioners and as to when the charge-sheet will be filed.

7. The Petitioner before this Court claimed that he is a bonafide purchaser of the property from the erstwhile owner for value/consideration and he is in possession of the said property. Petitioner purchased the said property vide sale deed dated 03.05.2019 from Ms. Diana Sylvia Fernandes and her husband Mr. Tomy Savio Fernandes, admeasuring 1,300 sq. mtrs., bearing Survey Nos.30/5 and 30/6 of Village Arpora, for a consideration of ₹65,00,000/- (Rupees Sixty Five Lakhs Only). The sale deed has been duly registered in the office of the Sub-Registrar, Bardez, Mapusa, Goa. From the date of purchase, Petitioner is in possession of the said property.

8. It is further contended by the Petitioner that somewhere in August, 2019, he received summons from the Civil Court, Mapusa in Special Civil Suit No.61/2019 filed by Respondent No.3 and 2 others. Along with the said notice/summons, a copy of ex-parte temporary injunction order was also served upon the Petitioner. Accordingly, he appeared before the Civil Court at Mapusa and placed all the relevant facts and documents. After hearing the Petitioner, the Civil Court vacated the ex-parte order. Thereafter, the Petitioner filed application for temporary injunction in the same suit praying to restrain Respondent No.3 herein from interfering with his possession of the suit property. The learned Civil Court at Mapusa decided both the injunction applications filed by the Petitioner and that of Respondent No.3 in the said suit. Vide order dated 09.01.2020 (Annexure - 'C'), the learned Civil Court, Mapusa, dismissed temporary injunction application filed by Respondent No.3 and allowed the temporary injunction application filed by the Petitioner thereby protecting his possession over the suit property. Respondent No.3 then approached this Court against the said order by filing Appeal from Order No.10/2020 wherein this Court vide order dated 05.02.2020 directed the parties to maintain status quo.

9. The Petitioner then contended that Respondent No.3 thereafter lodged a complaint with Mapusa Police Station dated 03.09.2020 basically alleging fraud against the predecessor-in-title of the Petitioner. However, in the said complaint, the Petitioner was arrayed as an accused only because he is the beneficiary of the said land on the basis of the sale deed. Respondent No.1 registered such complaint vide FIR No.294/2020 for various offences as disclosed above and started investigation.

10. It is the main contention of the Petitioner that in the entire complaint, there are no allegations against the Petitioner regarding commission of any cognizable offences. Similarly, such complaint is filed only after rejection of injunction application by the Civil Court, so as to give colour of criminal proceedings to a purely civil dispute. It is his contention that such complaint is purely a malafide attempt on the part of Respondent No.3 to rope in the Petitioner in a criminal matter so as to pressurize him in the civil dispute pending between the parties. It is further his contention that even if all the allegations in the complaint dated 03.09.2020 if taken on the face of it, would not disclose any offence, much less any cognizable offence qua the Petitioner. The entire complaint is focussed on the sale deed dated 12.08.1993 by which the predecessor-in-title of the Petitioner purchased the suit property. On these allegations, the Petitioner approached this Court for quashing of the FIR.

11. Heard Mr. A.D. Bhobe for the Petitioner, Mr. Pravin Faldessai for Respondent Nos.1 and 2 and Mr. Jayant Karn for Respondent No.3.

12. The learned Counsel Shri Bhobe appearing for the Petitioner vehemently argued that the complaint/FIR is nothing but abuse of the process of law and that it is filed only to give colour of criminal proceedings to a purely civil dispute. He, therefore, prayed that that FIR qua the Petitioner be quashed.

13. The learned Additional Public Prosecutor appearing for Respondent Nos.1 and 2 submitted that this matter is a case of land grabbing by impersonation and the matter is investigated by a Special Investigation Team (SIT) of Goa Police. He submitted that there are similar cases which SIT is undertaking investigation and therefore, till filing of the charge-sheet, the petition may not be considered for grant of any relief.

14. The learned Counsel appearing for Respondent No.3 forcefully submitted that in the absence of Respondent No.3 in Goa, the properties of his parents were grabbed by using forged and fabricated documents and more particularly, power of attorney, which is not found on the record. He submits that the matter is investigated by a special team, and therefore, this Court be slow in interfering in such matters.

15. After giving anxious consideration to all the factual aspects as well as the decisions relied upon by the parties, including the case of ***State of Haryana and Others vs Bhajan Lal And Others***[1], we are of the firm opinion that FIR lodged against the present Petitioner is clearly an abuse of the process of law as there are no allegations found in the FIR which could attract any cognizable offence provisions qua the Petitioner.

16. Before considering the said aspect, reference is necessary to the decision passed by the Hon'ble Apex Court in the case of ***M/s Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra***[2]. In the

1 1992 Supp (1) SCC 335
2 AIR 2021 SC 1918

above decision, the Hon'ble Apex Court, after considering all earlier decisions, including the landmark decision in the case of *Bhajan Lal* (supra), observed in paragraph 15 as under:

> "*15. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result in miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage i.e. quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions referred to hereinabove, conferment of wide power requires the Court to be more cautious and it casts an onerous and more diligent duty on the Court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the Court to the relevant facts.*

17. In the case of ***State of Odissa vs Pratima Mohanty Etc.***[3], the Hon'ble Apex Court while dealing with the powers of the High Court

3 AIR 2022 SC 41

under Section 482 Cr.P.C. and after considering its earlier decisions, reiterated as under:

> "6.2 - *It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C., the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the minitrial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."*

18. Keeping in mind the above settled proposition as laid down by the Hon'ble Apex Court, including the guidelines/parameters as found in paragraph No.102 in the case of *Bhajan Lal* (supra), we propose to examine the allegations in the complaint and the report submitted by the Respondent No.1 as directed by this Court.

19. The first and foremost contention raised by the learned Counsel Shri Bhobe is that allegations made in the FIR, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the Petitioner.

20. A copy of the complaint filed by Respondent No.3 dated 03.09.2020 is placed on record from page No.29 (Annexure 'A-colly'). Perusal of this complaint shows that it runs into 37 pages. The subject of the complaint is itself with regard to property bearing Survey No.30/5, 30/6 and 30/7 of Village Arpora. In the complaint, it is alleged that one Mr. Antonio Caridade Piedade de Sequeira, resident of Mahim, Mumbai, falsely impersonating himself as power of attorney holder of the parents of the complainant namely Mr. Baptist Francis D'souza alias Baptista D'souza and his wife Mrs. Carolina D'souza, executed sale deed on 12.08.1993 in favour of Mr. Clement D'Silva. This fraudulent sale deed was registered before the Sub-Registrar, Bardez, Mapusa, Goa. It is claimed that Mr. Antonio Sequeira claiming to be the power of attorney holder of the parents of the complainant with dishonest and fraudulent intention and by misappropriating the property, sold an area of 5,000 sq. mtrs. to Mr. Clement D'Silva, but the complaint further shows that it is lodged against the officers/employees of the office of Civil cum Sub-Registrar of Bardez, Mapusa, Goa for committing criminal acts of forgery and fraudulently forging the signature of Mrs. Luisa Maria Fernandes who was the then Sub-Registrar of Bardez with a malafide intention of registering sale deed dated 12.08.1993 on the basis of fraudulent power of attorney obtained by impersonation by Mr. Antonio Sequeira. It is further claimed in the complaint that the alleged purchaser Mr. Clement D'Silva expired. However, he also conspired with the said Antonio Sequeira in registering the sale deed. Finally, the complaint shows that the said complaint is against the beneficiaries of the above illegal and fraudulent deed of sale dated

12.08.1993 namely Mrs. Jonetta Bernadit Fernandes, Mrs. Diana Silvya Fernandes and her husband Mr. Tommy Savio Fernandes and Mr. Peter Benedict D'silva who are all the lawful heirs of the purchaser Mr. Clement D'Silva (since deceased). The complaint further shows that it is also against one Mr. Umesh Eknath Kambli and Mr. Vikesh K. Harmalkar (present Petitioner) who found to be carrying out further illegal acts of misappropriation of the complainant's parents' lawful property, thereby committed various criminal acts.

21. On perusal of the entire complaint which runs into several pages, with the assistance of the learned Counsel for the Petitioner and with the assistance of the learned Counsel for Respondent No.3, we fail to find out any substantial allegation against the Petitioner qua the criminal acts as alleged in the said complaint.

22. The learned Counsel Shri Bhobe was right in submitting that contents of the present complaint lodged by Respondent No.3 with Mapusa Police dated 03.09.2020 are the allegations in the Special Civil Suit filed by Respondent No.3 thereby challenging the sale deeds of the year 1993 and subsequent deeds as found in the said suit. It is an admitted fact that the said Special Civil Suit was filed by Respondent No.3 before Mapusa Court in the month of August, 2019 wherein the predecessor-in-title of the Petitioner are parties. The documents placed along with the petition further show that injunction application filed by Respondent No.3 in the said Civil Suit was rejected vide order dated 09.01.2020. By the same order, the injunction application filed by the defendant therein at Exh.25 was allowed thereby restraining present Respondent No.3 from interfering with the possession of the suit properties.

23. Reply affidavit filed by Respondent No.3 clearly goes to show that public notices dated 29.03.2019 and 30.03.2019 were published in the newspaper "Herald" wherein the Petitioner being an Advocate, published the notice stating that he is investigating a title of the said three properties and accordingly called objections from the general public. Respondent No.3 through his brother vide letter dated 03.04.2019, responded to such public notice and informed the Petitioner that said three properties belong to Respondent No.3 and said legal heirs and their late parents and claimed that the sale deed dated 12.08.1993 was a fraudulently executed document. Thus, Respondent No.3 was aware that such sale deed dated 12.08.1993 was executed by which suit properties were sold to the predecessor-in-title of the Petitioner. Similarly, the reply filed by Respondent No.3 further shows in paragraph No.11.14 that by public notice dated 12.07.2019 published in "The Navhind Times", Advocate Naik from Mapusa stated in the public notice that their client is interested in purchasing the said property in Survey Nos.30/5 and 30/6 from Ms. Diana Silvya Fernandes and Tommy Savio Fernandes and called for objections from interested parties within 15 days.

24. Reply affidavit of Respondent No.3 further shows that he replied to the said public notice vide his reply dated 20.07.2019 addressed to Advocate P. Naik informing her not to go ahead with the proposed sale thereby informing that his parties will be responsible in the legal consequences. It further refers in the reply at paragraph

11.16 that inspite of such intimation, Petitioner who is a lawyer himself, purchased two properties purportedly for a sum of ₹2,20,00,000/- (Two Crores Twenty Lakhs Only).

25. With the above documents and the fact that when Respondent No.3 was unsuccessful in the civil litigation, more specifically when his injunction application was rejected, present complaint was lodged with Mapusa Police.

26. We carefully perused all allegations made in the complaint qua the Petitioner and observed that such allegations are not at all sufficient enough thereby disclosing commission of a cognizable offence against the Petitioner, except the fact that he claims to be a bonafide purchaser of the property from the erstwhile owner on the basis of registered sale deed. All basic allegations in the complaint are found against Mr. Antonio Caridade Piedade de Sequeira who impersonated by a fraudulent power of attorney and sold the properties of the parents of Respondent No.3 to Mr. Clement D'Silva, in the year 1993.

27. When the Petitioner published the notice in the newspaper calling upon objections from the public, Respondent No.3 lodged reply claiming that such property was fraudulently sold by the said power of attorney. However, no action was taken by Respondent No.3 to file any proceedings either in the Civil Court or with the Police immediately on the knowledge of such fraudulent act of the power of attorney holder. Therefore, the Petitioner who purchased the suit property vide a registered sale deed has to be considered as a bonafide purchaser for consideration paid to the erstwhile owner of the suit property. Unless the sale deed of the year 1993 is declared null and void, has got presumptive value. Therefore, the Petitioner cannot be blamed or connected with any fraudulent activity which was allegedly carried out by Mr. Antonio Caridade Piedade de Sequeira. Such act was purportedly executed in the year 1993. The Petitioner purchased the suit property in the year 2019 vide sale deed dated 03.05.2019 executed between Mrs. Diana Silvya Fernandes and her husband Mr. Tommy Savio Fernandes. Therefore, the complaint nowhere discloses any overt act on the part of the Petitioner to connect with the power of attorney or the sale deed dated 12.08.1993.

28. It is, therefore, clearly spelt out that the allegations made in the FIR/complaint even if they are taken at the face value and accepted in their entirety, do not prima facie constitute any cognizable offence qua the Petitioner. Similarly, uncontroverted allegations made in the FIR/complaint and the evidence collected so far as found in the report of Respondent No.1 given to this Court in a sealed envelope, do not disclose commission of any cognizable offence qua the Petitioner.

29. It further shows that such criminal investigation qua the Petitioner is manifestly contended with a malafide intention to pressurize him with regard to the civil proceedings and with an ulterior motive only because he is the purchaser of the suit property from the erstwhile owner for due consideration. Thus, allowing to continue such investigation against the Petitioner is an abuse of the process of law, and therefore, ends of justice require that the proceedings/investigation qua the Petitioner needs to be quashed by exercising inherent powers of this Court under Section 482 of the Criminal Procedure Code and Article 226 of the Constitution of India.

30. Though FIR was lodged in the year 2020 vide Crime No.294/2020 dated 28.10.2020, the report from the Respondent No.1 received by this Court in a sealed envelope, shows no progress except calling for some documents from the office of Sub-Registrar, Bardez, Goa. The report further shows that during the course of investigation, it was observed that the properties bearing Survey Nos.30/5, 30/6 and 30/7 of Village Arpora, Bardez, Goa, were allotted to Accused Nos.2, 3, 4, 5 and 6 in Inventory Proceedings No.633/2018. Such Inventory Proceedings was filed by Mrs. Diana Silvya Fernandes wife of Tommy Savio Fernandes, resident of Mumbai. Accordingly, Respondent No.1 wrote a letter to the Civil Court at Mapusa to furnish the documents regarding such Inventory Proceedings. There is nothing in the said report as to whether any investigation was carried out qua the present Petitioner so as to link him with the alleged offences. The said report was submitted to this Court on 17.11.2021. Since thereafter, no additional report is placed on record till date. No doubt, the learned Additional Public Prosecutor submitted that investigation of this matter is now entrusted with the Special Investigating Team (SIT). However, he failed to submit as to what material has been collected till date showing any involvement of the Petitioner qua the alleged offences.

31. Having said so, we are fully convinced that continuation of the investigation qua the Petitioner in the said FIR No.294/2020 amounts to clearly an abuse of the process of law, and therefore, needs to be quashed and set aside.

32. Rule is made absolute in terms of prayer clause (a) qua the Petitioner.

33. There shall be no orders as to cost.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**

JOSE FRANCISCO DSOUZA Digitally signed by JOSE FRANCISCO DSOUZA Date: 2022.09.19 14:49:47 +05'30'