

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.854 OF 2021 (F)

Mr. Gaurav Bakshi,
45 years of age, Service,
R/o. B-402, Martins Palm Fringe,
Cardozo Waddo, Taleigao, Goa

...Petitioner

Versus

1 State of Goa,
Through the Public Prosecutor
High Court of Bombay at Goa.
Panaji, Goa

2 The Police Inspector,
Panaji Police Station,
Panaji, Goa.

3 Shri Harold De Sa
Chairman of Martin Palm Fringe
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.

4 Darryl Frank
Treasurer of Martin Palm Fringe
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.

5 Shilpa Shah
Member of Marin Palm Fringe
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.

Deleted as per order
dated 03/10/2022

3 Martins Palm Fringe Association
Through its Chairperson,

Mr. Harold De Sa,
Having office at Cardozo Waddo,
Taleigao, Tiswadi, Goa.

- 6 Sheldon Martins ...Respondents.
Member of Marin Palm Fringe
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.

WITH
CRIMINAL WRIT PETITION NO.855 OF 2021 (F)

Mr. Gaurav Bakshi,
45 years of age, Service,
R/o. B-402, Martins Palm Fringe,
Cardozo Waddo, Taleigao, Goa

...Petitioner

Versus

- 1 State of Goa,
Through the Public Prosecutor
High Court of Bombay at Goa.
Panaji, Goa
- 2 The Police Inspector,
Panaji Police Station,
Panaji, Goa.
- 3 Shri Sheldon Martins
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.
- 4 Harold De Sa
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.
- 5 Rajesh Shah
R/o. F-202, Martis Palm Fringe, Cardoz

Deleted as per
order dated
03/10/2022

Waddo, Taleigao, Tiswadi, Goa.

- 3 Martins Palm Fringe Association
Through its Chairperson,
Mr. Harold De Sa,
Having office at Cardozo Waddo,
Taleigao, Tiswadi, Goa.

...Respondents.

WITH
CRIMINAL WRIT PETITION NO.856 OF 2021 (F)

Mr. Gaurav Bakshi,
45 years of age, Service,
R/o. B-402, Martins Palm Fringe,
Cardozo Waddo, Taleigao, Goa

...Petitioner

Versus

- 1 State of Goa,
Through the Public Prosecutor
High Court of Bombay at Goa.
Panaji, Goa
- 2 The Police Inspector,
Panaji Police Station,
Panaji, Goa.
- 3 Shilpa Shah
Wife of Mr. Rajesh Shan
Major of age,
R/o. F-202, Martis Palm Fringe, Cardoz
Waddo, Taleigao, Tiswadi, Goa.

...Respondents

Mr. Nigel Da Costa Frias with Ms. Barbara Andrade, Advocate for the
Petitioner.

Mr. S.G. Bhobe, Public Prosecutor with Mr. P. Faldessai, Additional Public
Prosecutor for the State.

Mr. Ryan Menezes with Mr. Nigel Fernandes and Ms. Gina Almeida,

Advocates for Respondent No.3.

WITH
CRIMINAL WRIT PETITION NO.47 OF 2021

Eng. Sheldon S. Martins,
S/o. Late Aleixo Xavier Martins,
Age 43 years,
210, Kamat Grand, St. Inez, Panjim, Goa. ...Petitioner

Versus

- 1 State of Goa,
Through the Public Prosecutor
High Court
Porvorim, Goa
- 2 The Inspector of Police,
Panaji Police Station,
Panaji, Tiswadi, Goa.
- 3 Mr. Gaurav Bakshi,
Flat No.B-402, Martins Palm Fringe,
Cardozo Waddo, Taleigao, Tiswadi, Goa ...Respondents

WITH
CRIMINAL WRIT PETITION NO.621 OF 2022(F)

- 1 Darryl Claudius Frank,
aged about 48 years,
resident of No.F-201,
Martins Palm Fringe,
Taligao, Tiswadi, Goa.
- 2 Shilpa Rajesh Shah,
aged about 47 years,
resident of No.F-202,
Martins Palm Fringe,
Taligao, Tiswadi, Goa.

3 Rajesh Kantilal Shah,
aged about 47 years,
resident of No.F-202,
Martins Palm Fringe,
Taligao, Tiswadi, Goa. ...Petitioners

Versus

1 State of Goa,
Through the Public Prosecutor
Panaji Police Station,
Panaji, Goa.

2 Gaurav Bakshi,
Major of age,
r/o. B-402, Martins Palm Fringe,
Taleigao, Tiswadi, Goa ...Respondents

Mr. Ryan Menezes with Mr. Nigel Fernandes, Advocate for the Petitioners.
Mr. S.G. Bhobe, Public Prosecutor for the Respondents- State.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

Dated : 11th October, 2022

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

Heard Mr. Nigel Da Costa Frias who appears with Ms. Barbara Andrade, learned Counsel for the petitioner, Mr. S.G. Bhobe, learned Public Prosecutor who appears along with Mr. P. Faldessai, Additional Public Prosecutor for the State, Mr. Ryan Menezes, who appears along with Mr. Nigel Fernandes and Ms. Gina Almeida, learned Counsels for Respondent

No.3 in Criminal Writ Petition Nos.854 of 2021(F), 855 of 2021(F) and 856 of 2021(F) and Mr. Ryan Menezes with Mr. Nigel Fernandes, learned Counsel for the petitioners and Mr. S.G. Bhobe, learned Public Prosecutor for the Respondents- State in Criminal Writ Petition Nos.47 of 2021 and 621 of 2022(F).

2. Rule. Rule made returnable forthwith with the consent of the parties and the matters are taken up for final disposal.

3. In all these matters the petitioners are praying for the quashing of the respective First Information Report filed against them by the informant.

4. During the pendency of the present petition, the parties arrived at a settlement and accordingly the informant in these petitions filed respective affidavits claiming therein that the said informant is not having any objection for quashing of the respective First Information Report and ultimately the charge sheet filed before the concerned Court.

5. In Criminal Writ Petition No.621 of 2022(F) and 47 of 2021, the petitioner are praying for quashing of First Information Report No.157 of 2020 for the offence punishable under Section 504, 506, 354 r/w 34 of Indian Penal Code (IPC) and Section 8 of Goa Children's Act,2003. It is the contention of the petitioners that the provisions of Section 354 of IPC and Section 8 of the Goa Children's Act are not at all attracted whereas the petitioners along with the informant arrived at the settlement with regard to offences punishable under Section 504 and 506 of IPC. It is their contention that some quarrel took place in the society between the

petitioners and the informant and his family members which resulted in the filing of cases and counter cases resulting in the registration of the First Information Report at Panaji Police Station, including the present one.

6. Since the provisions of Section 354 of IPC and Section 8 of Goa Children's Act, 2003 are invoked by the investigating agency, it is necessary to look into the complaint lodged against the petitioners by the informant, together with a statement of the victim child, so as to ascertain whether ingredients of Section 354 of IPC and Section 8 of Goa Children's Act are, *prima facie*, attracted.

7. The informant lodged the complaint with the Police Inspector, Panaji Police Station on 28/04/2020 which is at page 36. The informant along with his family members claimed that the petitioners refused to register a society for their complex and deliberately excluded them from all meetings of the flat owners. The petitioners were demanding money to be paid to them which is an act of extortion. The petitioners failed to furnish valid registration documents of their organization though they are collecting money from the flat owners, which the informant refused to pay. The informant, therefore, filed a First Information Report for cheating and fraud against one Socorro Vaz and Sheldon Martins (petitioner in Criminal Writ Petition No.47 of 2021). The said persons became upset and accordingly on 28/04/2020 they committed criminal acts of molesting his daughter by way of improperly touching her, obstructing her and the informant from playing badminton and threatening to file false cases against the informant and his family members.

8. On perusal of the statement of the child recorded under Section 161 of CrPC in presence of a member of childline dated 29/04/2020 which is at page 40 as well as her statement recorded before the Magistrate under Section 164 of CrPC which is at page 70, it is clear that when she along with the informant reached near the badminton court, one lady started yelling at them and abused them. However, she does not remember what exactly the words used by the said lady. Thereafter, two men came and touched her shoulder. They did not say anything but they blocked her from going towards her father. After a few minutes, her father came and brought her home.

9. Both these statements nowhere suggest or even remotely establish ingredients of Section 354 of IPC so as to consider molestation. She only states that the said two persons touched her shoulders. This cannot be considered or stretched to the extent of construing ingredients of Section 354 of IPC or Section 8 of the Goa Children's Act. Basically, the dispute is between the informant and the petitioners and that too with regard to society. Using a child for such a dispute is not at all acceptable, for the purpose of lodging a First Information Report. Be that as it may, the ingredients of Section 354 of IPC and Section 8 of the Goa Children's Act are not at all spelt out.

10. The remaining two Sections are concerned, the informant has filed an affidavit at Exh.81 wherein he clearly disclosed on oath that the so-called dispute between them is now settled and therefore he is having no objection for quashing First Information Report No.157 of 2020.

11. The petitioners are therefore entitled for the relief claimed in the present matter. In this regard, reliance can be placed safely in the case of **Gian Singh v/s. State of Punjab and another¹ and Narinder Singh and others v/s. State of Punjab and another².**

12. However, since police machinery was used and even a child was brought into the matter for the purpose of registering offence, it is necessary that the petitioners shall pay an amount of ₹15,000/- each (Rupees Fifteen Thousand only) to Goa State Legal Services Authority for the relief which they have claimed in the present matter.

13. In Criminal Writ Petition No.854 of 2021, the petitioner is praying for quashing of First Information Report No.160 of 2020 registered at Panaji Police Station at the instance of respondent No.3 and consequently charge sheet bearing No.166 of 2020 filed before the Judicial Magistrate First Class at Panaji wherein it has been alleged by the respondent No.3 that on 06/05/2020 at 20.13hours at Martin Palm Fringe Complex, Taleigao the petitioner tampered with the CCTV camera installed at the said complex, criminally trespassed into the security cabin and pulled out the wires of CCTV console and tempered and damaged the CCTV console and monitor over the issue of the previous enmity. Accordingly, the offence is registered against the petitioner under the offence punishable under Sections 451 and 427 of IPC.

14. In Criminal Writ Petition No.855 of 2021, the petitioner is claiming

¹ (2012) 10 SCC 303

² 2014 AIR SCW 2065

for quashing of First Information Report No.174 of 2020 and consequently charge sheet bearing No.188 of 2020 filed before the learned Magistrate at Panaji. The said First Information Report was lodged against the petitioner by respondent No.3 alleging therein that on 16/05/2020 at around 18.31hours at Martin Palm Fringe Complex, Taleigao, the petitioner unauthorisedly locked one of the rear gates of the said complex with his own chain and lock, in addition to the existing lock placed by the Martin Palm Fringe Association without consent of Managing Committee and thereby wrongly restrained the resident of the said complex. Accordingly, the offence was registered under Section 34 of IPC.

15. In Criminal WP No.856 of 2021, the petitioner is praying for quashing of First Information Report No.156 of 2020 together with the charge sheet bearing No.115 of 2020 filed before the Magistrate at Panaji. In the said matter complaint was lodged by respondent No.3 on 28/04/2020 stating therein that on that day at 17.15hours at Palm Fringe, Cardoz Waddo, Taleigao, accused assaulted and threatened the security person namely Omprakash and when the complainant intervened, the petitioner/accused came close to the body of the complainant and abused her in filthy words and made an obscene gesture towards her with intent to outrage her modesty in public view and also threatened the complainant, her husband and Mr. Derryl with dire consequence. Accordingly, the offence was registered for offences punishable under Section 323, 504, 506(ii) and 509 of IPC.

16. The learned Counsel appearing for the respective parties submitted

that basically, the dispute is between the members of the society and one of the occupants who is the petitioner in the above three petitions.

17. It is their contention that such dispute *inter se* between the Association and a flat owner is now settled amicably and, therefore, First Information Reports together with the charge sheets pending on the file of the Magistrate be quashed and set aside as some of the offences are not compoundable.

18. Respective affidavits of the informants/complainants are also placed on record confirming that the matter has been amicably settled between such informant and the accused persons. These affidavits further show that the informants are not having any objection if the First Information Reports together with the charge sheets are quashed and set aside.

19. In the case of ***Gian Singh*** (supra) the Hon'ble Apex Court observed that if the matter is settled between the parties and it is not affecting the public at large, the powers under Section 482 of CrPC could be exercised to give quietus to the dispute.

20. Considering the facts in these matters and the affidavits filed by the informants, we are inclined to accept the affidavits and to consider that the matters are settled between the parties.

21. The petitioner in Criminal Writ Petition No.854, 855 and 856 of 2021(Filing No.) needs to pay the amount of ₹15,000/- to the Goa State Legal Services Authority since both these parties have used police machinery to settle their scores and more particularly disputes between the members of

the society.

22. Having said so, we allow the quashing of First Information Reports No.160 of 2020, 156 of 2020 and 174 of 2020 along with the respective charge sheet Nos.166 of 2020, 155 of 2020 and 188 of 2020 subject to the payment of ₹15,000/- by Shri Gaurav Bakshi to the Goa State Legal Services Authority, ₹15,000/- each by the petitioners in Criminal Writ Petition No. 621 of 2022 C.R. No.159 of 2020 along with charge sheet No.140 of 2021 before the Children's Court and the petitioner in Criminal Writ Petition No.47 of 2021 First Information Report No.157 of 2020 along with charge sheet No.140 of 2021 before the Children's Court, within a period of two weeks from today.

23. In the above terms, all the criminal Writ Petitions stand disposed of.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

MEENA
VISHAL
BHOIR

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by MEENA
VISHAL BHOIR
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