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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 61 OF 2021

RAKESH SWAR

...PETITIONER

Versus

STATE OF GOA, THR. POLICE
INSPECTOR, PERNEM POLICE
STATION, PERNEM AND ANR.

...RESPONDENTS

Mr. Ashish Swar, Advocate *for the Petitioner.*

Mr. S.G. Bhobe, Public Prosecutor *for the Respondents.*

CORAM: MANISH PITALE, J.

DATED: 27th January 2022.

P.C.:

1. Heard Mr. Swar, learned Counsel for the petitioner and Mr. Bhobe, learned Public Prosecutor on behalf of the respondent-State.

2. By the present Writ Petition, the petitioner has challenged order dated 03.09.2021, passed by the Court of Judicial Magistrate First Class, Pernem, whereby an application filed under Section 258 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for stoppage of proceedings, has been dismissed.

3. In the present case, the petitioner is accused in a summons case, on the basis of a proceeding initiated against the petitioner for allegedly having obstructed and abused an Inspector, who at the relevant time was performing the duty as a Motor Vehicle Inspector. The allegations led to the registration of offence under Sections 353 and 504 of the Indian Penal Code, 1860 (IPC) against the petitioner. The statements of witnesses were recorded and the substance of accusation was stated as per Section 251 of Cr.P.C. and the matter proceeded further. After the panch witness was examined, the aforesaid application was moved by the petitioner under Section 258 of Cr.P.C. As noted above, the said application was taken up for consideration and the Magistrate found that the original complainant i.e. the Motor Vehicle Inspector was yet to be examined and the material already available on record was sufficient for the applicant to face the proceedings.

4. Mr. Swar, learned Counsel for the petitioner submitted that since Section 258 of Cr.P.C. use the words “at any stage”, the application, in the present case, was correctly moved on behalf of the petitioner. To support the said contention, the learned Counsel for the petitioner has relied on a number of judgments. It is submitted that the ingredients of Sections 353 and 504 of IPC were not made out at all, and therefore, the proceedings

ought to have been stopped by the Magistrate by exercising Section 258 of Cr.P.C. In this regard, the learned Counsel has relied on the judgment of the Hon'ble Supreme Court in the case of **Manik Taneja Vs. State of Karnataka, (2015) 7 SCC 423** and **Vikram Johar Vs. the State of Uttar Pradesh & Others, (2019) 14 SCC 207**.

5. On the other hand, Mr. Bhohe, learned Public Prosecutor appearing for the respondents submitted that a perusal of the complaint of the Motor Vehicle Inspector and the statements on record provide enough material for establishing a *prima facie* case against the petitioner and that the application under Section 258 of Cr.P.C. was correctly dismissed by the Magistrate. It was submitted that when the substance of the accusation was stated to the petitioner under Section 251 of Cr.P.C., there was no challenge raised to the same. The matter had proceeded further and therefore, the Magistrate was justified in passing the impugned order, notwithstanding the fact that such an application could be filed at any stage of the proceeding.

6. Having heard the contentions raised on behalf of the rival parties, this Court is of the opinion that it needs to be examined whether, the material available on record indicates that the matter

ought to proceed further or an exceptional case is made out for stopping the proceedings under Section 258 of Cr.P.C.

7. A perusal of the complaint dated 20.02.2018, filed at the behest of the Motor Vehicle Inspector shows that the petitioner was caught while riding a two-wheeler, without wearing a protective headgear i.e. the helmet. The petitioner admitted the offence. After reading the checking report, the petitioner signed the same and his driving licence was impounded. It is further alleged that the petitioner then left the spot of the incident and returned in half an hour with his friends and they started shouting with abusive language and obstructed the complainant and other police officials from performing their duty. It is further alleged that the petitioner recorded the aforesaid activities on mobile and made it viral via social media. It is further alleged that the petitioner threw the checking report and said that he would not take the report.

8. During the course of further proceeding, statements were recorded and in the statement of the original complainant, there is also a reference to the allegation that during the course of the aforesaid incident, the petitioner allegedly gave a bite.

9. There cannot be dispute about the fact that an application under Section 258 of Cr.P.C. could be made at any stage and

therefore, no fault can be found with the application having been filed by the petitioner before the Magistrate. Hence, there is no necessity to refer to the judgments, on which, learned Counsel for the petitioner has placed reliance. The only question is whether, the ingredients of offence under Sections 353 and 504 of IPC were made out for the matter to proceed further. A perusal of the impugned order shows that the Magistrate has considered the material on record and has found that the allegations deserve further inquiry in the matter.

10. This Court has perused the material on record, including the complaint, the statements of the witnesses and the manner in which the incident is described. The nature of the allegations do show that the matter deserves to proceed further and the petitioner has failed to make out a case for stoppage of proceeding under Section 258 of Cr.P.C.

11. The judgment of the Hon'ble Supreme Court in **Manik Taneja** (supra) is distinguishable on facts. In the said case, the gravamen of the allegations against the accused was that they had posted some comments on the Facebook page of Bangalore Police, alleging misbehaviour by the Police. In the backdrop of such facts, the Supreme Court found that power under Section 258 of Cr.P.C. could be exercised for stopping the proceedings.

Insofar as the case of **Vikram Johar** (supra) is concerned, again, on facts, it was found that no offence under Section 504 of IPC could be said to have been made out, even, *prima facie*, against the accused. This Court is of the opinion that the material available in the present case, indicates that there is sufficient material on record to proceed further and no fault can be attributed to the Magistrate in passing the impugned order. The petitioner has failed to make out a case for stoppage of proceedings under Section 258 of Cr.P.C. Hence, the Writ Petition is dismissed. It is made clear that the Magistrate in the proceedings shall proceed further, without being influenced by the observations made in the present order.

MANISH PITALE, J.