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**IN THE HIGH COURT OF BOMBAY
AT GOA.
CRIMINAL WRIT PETITION NO. 54 OF 2021.
WITH
CRIMINAL MISC. APPLICATION NO. 64 OF 2021.**

MELANIA MENEZES, THR.

HER CONST. ATTORNEY,

MENEZES ATTLEE VIVIANO

... Petitioner.

VS

STATE, REP. BY

CUNCOLIM, POLICE

STATION AND ANR

... Respondents.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Mashelkar, Advocate for the petitioner.

Mr.G. Nagvenkar, Addl. Public Prosecutor for the respondent no.1.

CORAM: MANISH PITALE, J.

DATED: 28th January,2022.

ORAL ORDER.:

1. By this Writ Petition, the petitioner has challenged orders passed by the Sub-Division Magistrate (SDM) and the Sessions Court under Section 147 of the Code of Criminal Procedure (Cr.P.C).

2. The Magistrate has exercised power under Section 147 of the Cr.P.C. and issued certain directions to the petitioner by order dated 6.9.2021. In fact, the concerned Police Inspector is directed to remove blockage on both sides of the access way by removing certain laterite stones. This order was subject matter of challenge in a Revision Application before the Sessions Court. The revision application stood rejected and the petitioner approached this Court. On 25.11.2021, this Court issued notice for final disposal and in the meantime, the parties were directed to maintain status quo.

3. The respondent no.1/State has appeared through the learned Addl. Public Prosecutor while the respondent no.2, despite service, has chosen not to appear before this court. On 7.1.2022, this petition was specifically adjourned in order to grant a further opportunity to the respondent no.2 to appear before this Court. Today, when the petition is called out for hearing, none has appeared on behalf of the respondent no.2.

4. Perusal of the material on record shows that on 24.9.2020, the respondent no.2 and some other persons submitted a written complaint against the petitioner, alleging that she was blocking a public road. A request was made to the Collector of the District to cause an inspection of the site and to resolve the issue. The Deputy Collector / SDO called for a report from the concerned police officer. On 30.3.2021, ASI of Cuncolim Police Station submitted a report before the Magistrate, stating that there was mud pathway about 1.40 mts wide and that laterite stones were placed on both sides of the pathway. It was recorded that the said laterite stones were lying on both sides of the pathway for about 6 to 7 years. It was specifically stated that during the inquiry it appeared that the matter was of civil nature and therefore, the complainant was advised to approach the proper Court of law for redressal of grievance. Upon receiving the said report and upon giving opportunity to the petitioner to file her reply to the complaint, the Magistrate, by the impugned order dated 6.9.2021, exercised power under Section 147 of the Cr.P.C. to issue the aforesaid directions.

5. On a challenge raised before the Sessions Court, by the impugned judgment and order dated 13.11.2021, the revision application was dismissed and the order of the Magistrate was confirmed. It is significant that during the pendency of the revision application before the Sessions Court, there was an order of status quo operating.

6. Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the petitioner submitted that the order passed by the Magistrate was wholly without jurisdiction, for the reason that basic pre-requisite for exercise of jurisdiction under Section 147 of the Cr.P.C. was absent in the present case. It was submitted that the Magistrate could have exercised jurisdiction if the dispute was likely to cause a breach of peace. The learned Senior Counsel emphasized on the fact that neither in the complaint filed by the respondent no.2 and others, nor in the report submitted by the police, was there reference to any likelihood of breach of peace. It was submitted that a perusal of the impugned order passed by the Magistrate would also show that there was no finding rendered that there was material on record to indicate likelihood of breach of peace. On this basis, it was submitted

that the Magistrate could not have passed the impugned order and the approach adopted by the Magistrate indicated as if the Magistrate had proceeded to decide a civil dispute.

7. As regards the impugned order passed by the Sessions Court, the learned Senior Counsel submitted that apart from stating only sentence in paragraph 7, the Sessions Court did not refer to the aspect of likelihood of breach of peace at the site. It was submitted that even while recording the said finding, the Sessions Court did not refer to any material on record to reach such a finding. The learned Senior Counsel relied upon the judgment of the Calcutta High Court in the case of ***Mahammad Khandu Sarkar Vs Sadakali Sheik and others, AIR 1923 Calcutta 577*** and that of Madras High Court in the case of ***Angappa Goundan and others Vs Krishnaswami Goundar, AIR, 1959 Mad.28***, in support of the aforesaid contentions.

8. On the other hand, Mr. G. Nagvenkar, learned Addl. Public Prosecutor appearing on behalf of the respondent no.1/State defended the impugned orders passed by the Magistrate and the Sessions Court. It was submitted that the

Magistrate had indeed perused the police report on record and had reached findings against the petitioner, which in revisional jurisdiction, the Sessions Court could not have interfered with. It was submitted that in such a situation, this Court while exercising jurisdiction under Article 227 of the Constitution of India, ought not to interfere with the concurrent orders passed by the Magistrate and the Sessions Court, particularly when the orders were reasonable and in furtherance of resolving the dispute between the parties. In support of his contentions, the learned Addl. Public Prosecutor relied upon judgments of this Court in the case of **Shri Abdul Gaffar Vs State of Goa and anr., 1995(1) Goa L. T. 62** and **Reggie Fernandes, Vs The Police Inspector, Mapusa Police Station, and others, 2016(2) Goa L. R. 530(Bom).**

9. Heard learned Counsel for the rival parties and perused the material on record.

10. Before advertng to the material placed on record in the present case, it would be appropriate to refer to Section 147 of the Cr.P.C., under which the Magistrate has exercised power

and passed the impugned order in the present case. A perusal of the Section 147 of Cr.P.C. shows that under sub-section (1) thereof, the Magistrate has to be satisfied on a report of a police officer or upon other information that a dispute is likely to cause a breach of peace. Only when a dispute which is likely to cause a breach of peace is found to exist, that the Magistrate can exercise power under Section 147 of the Cr.P.C. Once the Magistrate exercises jurisdiction in such circumstances, inquiry can be conducted under sub-section (2) and an appropriate order can be passed under Sub-section (3) of the aforesaid provision.

11. Therefore, it becomes evident that, for the Magistrate to invoke jurisdiction under Section 147 of the Cr.P.C., existence of a dispute which is likely to cause breach of peace is a *sine qua non* and in the absence of such a pre-condition being satisfied, the Magistrate cannot exercise jurisdiction. In this context, the learned Senior Counsel appearing for the petitioner is justified in relying upon the judgment of Madras High Court in the case of **Angappa Goundan and others Vs Krishnaswami Goundar**(supra), wherein in an earlier Full Bench judgment of the Allahabad High Court has been

quoted. In the said judgment it has been categorically held that the Magistrate can exercise jurisdiction under Section 147 of the Cr.P.C. confined only to preventing breach of peace and the Magistrate is not expected to hold complicated inquiry concerning *inter se* rights of the parties. It is further clarified that such orders are intended to be of a temporary nature, till the rights of the parties are determined by the competent Court. The judgment of the Calcutta High Court in the case of ***Mahammad Khandu Sarkar Vs Sadakali Sheik and others*** (supra) in the context of Section 145 of Cr.P.C. also records that apprehension of breach of peace is the first condition necessary to give the Magistrate jurisdiction under the said provision. It is significant that Sections 145 and Section 147 of the Cr.P.C. both fall under the Chapter concerning disputes as to immovable property.

12. In the present case, the material on record shows that even in the complaint lodged by the respondent no. 2 and others before the Collector, the grievance raised is regarding alleged hindrances and blockage created by the petitioner and a request for inspection of the site for resolving the dispute. In the complaint, it is claimed that the width of the public

road is 3 mts. On a reference made to the police by the Magistrate, on 30.3.2021, the concerned police officer submitted the report, specifically recording that the site concerned a mud pathway about 1.40 mts wide. It is also recorded that laterite stones have been lying on the said mud pathway for the past about 6 to 7 years. It is categorically recorded that the matter appeared to be of civil nature and the complainant was advised to approach the competent Court of law for redressal of grievances. The said report of the police clearly indicates that the alleged hindrance/blockage was not of recent origin and there was absence of any urgency in the matter. There was absolutely no statement regarding likelihood of breach of peace and it is already noted that even in the complaint submitted by the respondent no.2 and others, there was no hint of any breach of peace or likelihood thereof.

13. Section 147 (1) of the Cr.P.C. specifically lays down that the Magistrate is to be satisfied from a report of the police officer or upon other information that a dispute exists, which is likely to cause breach of peace. In the present case, the aforesaid police report dated 30.3.2021, cannot by any stretch

of imagination be said to be indicating a dispute which was likely to cause breach of peace. There is also no “other information” on record to indicate that the Magistrate could have been satisfied that such a dispute existed, which was likely to cause a breach of peace.

14. In such circumstances, this Court is of the opinion that, the Magistrate could not have exercised jurisdiction under Section 147 of the Cr.P.C.. A perusal of the order dated 6.9.2021, passed by the Magistrate shows that there is not even a reference to the aspect of existence of a dispute which was likely to cause breach of peace. Perusal of the order of the Magistrate shows that it is as if the Magistrate is proceeding to consider a civil dispute between the parties. The rival contentions are recorded in detail and findings are rendered against the petitioner. Nowhere in the order is there any reference to availability of any information to reach a finding of likelihood of breach of peace. Thus, it becomes evident that the Magistrate proceeded in ignorance of the aforesaid mandatory requirement for exercising jurisdiction under Section 147 of the Cr.P.C.

15. A perusal of the order passed by the Sessions Court also shows that, apart from stating in paragraph 7 of the said order that the act of the petitioner was likely to cause breach of peace at site, there was no reference to any material whatsoever as to how the Sessions Court reached such a finding. This indicates that the Sessions Court also failed to appreciate the error committed by the Magistrate, while passing the impugned order dated 6.9.2021.

16. In so far as the judgments on which learned Addl. Public Prosecutor has placed reliance, suffice it to say that in the facts of the case of ***Abdul Gaffar Vs State of Goa and anr.***, (supra), the Court found that the Magistrate had perused the police report and was satisfied that there was likelihood of breach of peace. There can be no quarrel with such a position on facts and application of Section 147 of Cr.P.C. As noted, in the present case, there is total absence of any material to indicate a likelihood of breach of peace. In fact, the police report on the record is contrary, indicating that a civil dispute existed between the parties and that the complainant was indeed advised to approach the competent civil court. As regards the judgment of ***Reggie Fernandes***,

Vs The Police Inspector, Mapusa Police Station, and others (supra), it concerns exercise of power by this Court under Article 227 of the Constitution of India in the context of a notice issued by the Magistrate under Section 147 of Cr.P.C. The same would not be of much assistance in defending the orders passed by the Magistrate or the Sessions Court in the present case, because this Court has come to a conclusion that the Magistrate could not have exercised jurisdiction under Section 147 of Cr.P.C., in the facts of the present case.

17. In view of the above, the Writ Petition is allowed. The impugned orders passed by the Magistrate and the Sessions Court are quashed and set aside.

18. The Writ Petition stands disposed of accordingly. All pending applications, if any, stand disposed of.

MANISH PITALE, J.