

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.11 OF 2023**

IN

CRIMINAL REVISION APPLICATION NO. 2 OF 2023

WITH

CRIMINAL REVISION APPLICATION NO. 2 OF 2023

KESHAV NAIK

... Applicant.

VS

STATE OF GOA THROUGH THE POLICE
INSPECTOR

...Respondent

Mr. R. Menezes and Mr. N. Fernandes, Advocates for the
Applicant.

Mr. S. G. Bhobe, Public Prosecutor for the Respondent.

CORAM: B. P. COLABAWALLA, J
DATED: 20th FEBRUARY 2023

P.C.

1. Admit. With the consent of parties taken up for final hearing.
2. The above Criminal Revision Application is filed seeking to assail the order passed by the District Judge-1 and Additional Sessions Judge, North Goa at Panaji dated 9th December 2022. This order framed a charge against the Applicant/Accused No.3 for offences under Section 395 and 120B of the Indian Penal Code and Section 13(1)(d) (i) of the Prevention of Corruption Act, 1988.

3. The learned Advocate appearing on behalf of the Applicant/Accused No.3 submitted that Sessions Court completely misdirected itself by framing the charge against Accused No.3 under Section 395 of the IPC as well as under Section 13(1)(d) (i) of the Prevention of Corruption Act, 1988. The learned Advocate submitted that for there to be an offence under Section 395 (dacoity) it is a *sine qua non* that there have to be five persons involved. He submitted that on the facts of the present case, even according to the complaint filed by the victim dated 17th December 2016, it is clear that if at all, only four persons were involved in the incident. In this regard, he brought to my attention the complaint dated 17th December 2016 filed with the Calangute Police Station, the relevant portion of which reads thus:-

I showed Deepak Gadekar cash of Rs. 10,20,000/- and informed him to show old currency notes during which he phoned someone and two male person came on white colour activa bearing number GA11 B 7400 of which the rider was wearing jacket with black complexion and wearing khaki pant. The pillion rider was of fair complexion and height of about 5 feet inches. Upon seeing this I and Mr. Verissimo Fernandes got down from the car as we felt suspicious and we tried to ran away from the spot, however said Deepak Gadekar snatched the bag from my hand and remaining three persons namely Atmaram Malvankar, and those who came on the active assaulted me with slaps and kicks and took me near his swift car and tried to force me inside the car, however I managed to escape from their clutches but could not save and protect my bag containing cash as Deepak Gadekar snatched the same from my hands. I say that thereafter the driver

started the swift car Deepak Gadekar, Atmaram Malvankar and Pillion rider of the scooter set in the swift car and fled away also the scooter rider fled away from the spot.

4. He submitted that from this complaint also it is clear that at the highest, there were only four persons involved and therefore, a charge of dacoity could never be framed. According to the learned Advocate, this aspect has been completely ignored by the learned Sessions Court while framing a charge under Section 395 of the IPC against Accused No.3. The learned Advocate further submitted that a charge has been framed against Accused no.3 under Section 13(1)(d) (i) of the Prevention of Corruption Act, 1988. He submitted that on the date of the filing of the chargesheet, the said Section was no longer in existence and was omitted by Act 16 of 2018 with effect from 26th July 2018. He submitted that therefore no charge could have been framed under a Section which did not exist on the date of framing a charge. He submitted that this aspect has also been completely overlooked by the Sessions Court. For all these reasons, the learned Advocate submitted that it would be in the fitness of the thing if the matter is remanded back to the Sessions Court for it to consider these aspects afresh.

5. On the other hand, Mr. Bhobe, the learned Public Prosecutor submitted that paragraph 31 of the impugned order clearly records

that the material discussed in the case at hand *prima facie* brings out that Accused Nos. 1, 2, 3, and 4 with the aid of the approver (accused no.6) had committed theft of Rs.10,20,000/-(Rupees ten lakhs twenty thousand only) from the complainant and in committing the theft had caused hurt and wrongly restrained the complainant. Mr. Bhobe, therefore, submitted that this is not a case where there were only four persons involved but in fact, five persons were involved in committing robbery and therefore, the charge of dacoity was clearly made out.

6. As far as Section 13(1)(d) (i) of the Prevention of Corruption Act, 1988 is concerned, Mr. Bhobe submitted that it is not in dispute that the said Section was very much in existence on the date when the offence was committed. He submitted that it would be irrelevant whether the Section was thereafter deleted from the statute book. Thus, according to Mr. Bhobe, no interference is called for in the impugned order and the Criminal Revision Application ought to be dismissed.

7. I have heard learned Counsel for the parties at some length.

8. I find considerable force in the arguments canvassed by the learned Advocate appearing on behalf of the Applicant/Accused No. 3. *Prima facie*, on the basis of the statement of the complainant and

which is reproduced above, the offence of committing robbery has been attributed only to four persons. There is no fifth person in the complaint to which the offence of robbery is attributed. This aspect, it appears, has been overlooked by the Sessions Judge. This is something that would have to be considered and a finding rendered thereon before framing a charge under section 395 of the IPC.

9. Even as far as Section 13(1)(d)(i) of the Prevention of Corruption Act, 1988 is concerned, the Sessions Court would now have to consider that in view of the change in law whether a charge can be framed under a provision which no longer exists today. This is another aspect which the Court will have to consider at the time of framing the charge and which is absent in the impugned order.

10. In these circumstances, I am of the view that the impugned order needs to be set aside and the matter be remanded back to the Sessions Court for deciding the aforesaid issues afresh.

11. In these circumstances, the above Criminal Revision Application is allowed and the impugned order dated 9th December 2022 directing framing of charges against Accused No.3 is set aside and the Sessions Court is directed to hear Accused No.3 once again before framing charge.

12. The Criminal Revision Application is accordingly disposed of.

13. Needless to say that if any formal charge has been framed in the interregnum, the same is also set aside and the entire exercise shall be conducted afresh.

14. In view of the order passed in Criminal Revision Application, CRMA No.11 of 2023 does not survive and stands disposed of accordingly.

15. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J