

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.81 OF 2023

- 1 Mrs Anna Francisca D'Cruz,
Aged 73 years, Spinster,
R/o. H.No. 293, Corjuem
Aldona, Bardez, Goa.
Presently residing in Skylark Apts.
Block C/2, Altinho, Mapusa, Goa. **...Petitioner**

Versus

- 1 STATE
Through PP,
High Court of Bombay at Porvorim,
Goa.
- 2 Police Inspector,
Mapusa Police Station,
Mapusa, Goa
- 3 Mrs. Mitzie Vas Braganza,
R/o. Almeida Apartments
Near Civil Court Altinho
Mapusa, Bardez, Goa. **... Respondents**

Mr Anoop Gaonkar, under Legal Aid Scheme Advocate for the
Petitioner.

Mr Nikhil Vaze, Additional Public Prosecutor for the Respondent –
State.

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

DATED: **8th August, 2023.**

P.C.: (Per BHARAT P. DESHPANDE, J.)

1. Heard Mr Anoop Gaonkar, appearing for the petitioners under Legal Aid Scheme and learned Additional Public Prosecutor Mr Vaze for the State.
2. The present petition is filed under Section 482 of CrPC thereby challenging the FIR and the special Case No. IPC/53/2022 filed before the Children's Court at Panaji, claiming therein that such FIR and special Case is only a counter complaint with an intention to pressurize the complainant in connection with her own complaint filed against the respondents and it amounts to abuse of the process of law.
3. Mr Gaonkar appearing for the petitioner strongly contended that a false FIR has been lodged on 14/03/2022 by respondent No.3 in connection with alleged incident dated 08/03/2022. He submitted that this complaint is only at counterblast to the complaint and FIR lodged by the petitioner against respondent No.3 and others for which the Mapusa Police registered a FIR and accordingly filed the chargesheet which is pending before Mapusa Magistrate for the offence punishable under Section 324, 427 r/w 34 of IPC. Mr Gaonkar would submit that the complaint filed by the respondent No.3 on 14/03/2022 in connection with alleged incident dated 08/03/2022 is only an after thought and delay in filing it is not explained. He therefore would submit that the said FIR

along with the special case registered before the Children's Court is clearly an abuse of process of law and needs to be quashed and set aside.

4. Mr Vaze would submit that both complaints have been registered and investigated by the Police. Both matters are now pending in the Courts. He submits that no case is made out for quashing.

5. Perusal of complaint dated 14/03/2022 filed by respondent No.3 with Mapusa Police Station clearly shows that the same has been registered under Criminal Case No.78/2022 for the offence punishable under Section 504, 324, 506(ii) r/w. 34 IPC, at the initial stage. Later on provisions of Section 8 of the Children's Act were added since one of the victims is a child.

6. The complaint dated 14/03/2022 shows that incident took place on 08/03/2022 at around 8.30pm when respondent No.3 along with her daughter Ms Maria Braganza and her friend Mrs Albertina Jannice De Souza and her minor daughter Ms Olivia De Souza (Special child) has gone to a pizza shop which is located near Skylark apartment at Mapusa. The petitioner was found washing her car which was kept on the tar road adjacent to Skylark apartment. On seeing respondent No.3, the petitioner suddenly started abusing them in filthy words. The maid of the petitioner pushed the friend of respondent No.3 and her minor daughter and abused them also. The petitioner then along with her maid started assaulting respondent No.3, her friend Albertina and her minor daughter Ms Olivia by slaps and thereafter by using the slippers. When they tried to escape, the petitioner along with her maid restrained them and threw stones due to

which Albertina sustained injury on her head. The face of the minor was even scratched.

7. The charge sheet is filed before the Children's Court which include the statements of the witnesses and more specifically the child Olivia. On perusing the statement of the said child, it *prima facie* shows that there was some fight wherein the petitioner allegedly abused and assaulted them with stones and bamboo sticks due to which the said child suffered injury.

8. Mr Gaonkar pointed out that the petitioner filed a complaint with Mapusa Police Station with regard to the incident which happened on the same day and time and her complaint has been registered vide Crime No.76 of 2022 at Mapusa Police Station under Section 324, 427 r/w. 34 IPC. He then submitted that even chargesheet is filed before the learned Magistrate at Mapusa wherein respondent No.3 is an accused. A perusal of the complaint filed by the petitioner with Mapusa Police Station would *prima facie* go to show that an incident took place at around 8.30pm when she was washing a car near the Skylark building at Mapusa. Thus, it shows that there is a complaint and counter complaint filed with regard to the same incident. It further shows that some incident took place involving the petitioner and the respondent No.3 during that night. Both the complaints have been registered and investigated and thereafter chargesheets have been filed with the respective Courts.

9. The powers under Section 482 of CrPC, under such circumstances, cannot be invoked to claim that the complaint filed by respondent No.3 though belatedly, is a false one for the simple reason that the petitioner

lodged a complaint which has been investigated and a charge sheet is ready filed in respect of same incident. In such circumstances, it is not permissible for this Court to conduct a mini trial or a roving inquiry in order to find out the falsity of the complaint lodged by the respondent No.3 as the petitioner herself admitted that some incident took place during that night where petitioner, Respondent No.3 and others were involved/present.

10. Mr Gaonkar while arguing the matter also pointed out that the learned Children's Court has already framed charges against the petitioner, which means that even the Trial Court found *prima facie* material to frame charge against the petitioner. At this stage, he submitted that no arguments were advanced before framing of charge. Such submissions have no substance as a Court is duty bound to consider the material placed before it in the charge sheet to come to the conclusion that there is evidence *prima facie* to frame charge. If that is so, the exercise of powers by the Trial Court to frame charges against the petitioner would clearly go to show that there is sufficient and *prima facie* material to proceed with the trial.

11. The petition is therefore devoid of merit and hence, the same stands rejected.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

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VISHAL BHOIR

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