

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.48 OF 2023

Mr. Govind Thapa, ...Petitioners

Son of Gopal Thapa,

53 years of age, Indian National,

Manager of M/s. Gopal Builders and
Developers

Permanent residing at House No.31/1-2A,

Vijay Colony, New Cantt Road, Dehradun,
Uttarakhand- 248001

Employed at c/o. Gautam Hotel, Off Chogm
Road, Near Bella Vista Society, Porvorim-
Goa - 403 501.

Versus

1. State of Goa,
Through Police Inspector,
Porvorim Police Station Porvorim, Bardez,
Goa. (represented through Public Prosecutor)

2. Mr Joe Mathias, ... Respondents

Partner of Mathias Construction,

Mathias House, Campal, Panaji,

Tiswadi, North, Goa.

Mr I Agha with Ms V. Fernandes, Advocates for the petitioner.

Mr S.G. Bhobe, Public Prosecutor for the Respondent No.1.

Mr. G. Panandikar, Advocate for the Respondent No.2.

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

DATED: 21st JULY, 2023

ORAL JUDGMENT: (Per BHARAT P. DESHPANDE, J.)

1. Rule. Rule is made returnable forthwith. Heard parties at the admission stage itself.
2. The petitioner is before us for quashing of the FIR lodged at Porvorim Police Station vide FIR No.16 of 2023 for the offence punishable under Section 341 of IPC. It is the contention of the petitioner that lodging of such FIR is an abuse of the process of law and that dispute between the parties is purely a civil dispute in which a civil suit is already pending. A complaint nowhere discusses ingredients of criminal trespass however FIR has been lodged only to pressurise the petitioner to settle the dispute which is pending before the Civil Court.
3. Affidavit-in-reply on behalf of respondent No.2 is filed along with documents. Apart from raising preliminary objection, which has been claimed that the respondent is the owner of Survey No.37/1 to the North of his property there is property bearing Survey No.52/1. The erstwhile owner of the petitioner's property bearing Survey No.52/1 is trying to obstruct the entry of the respondents into their plot from a public road of 15meters wide shown into subdivision plan.
4. On perusal of complaint addressed to PI of Porvorim Police Station we are of the opinion that such complaint nowhere discloses the

ingredients of wrongful restraint as defined in Section 339 of IPC. The contents of complaint which is restricted to only two paragraphs which reads thus:

“Sub: Complaint for blocking of access to our property bearing Survey No. 37/1 of Pilerne Village.

Sir,

This is to inform you that today morning when our worker reached the site to resume work in survey No. 37/1, it was found that the same Mr Govind Thapa, Manager of M/s Gopal Builders & developers who had earlier caused nuisance by not allowing our workers to work in our property, has again parked two vehicles thereby blocking our access to our property from the 15 meter public road thereby resulting in our workers not being able to enter our property.

please find evidence enclosed in the form of photographs taken of the incident for your kind reference.

We are anticipating that Mr Govind Thapa, Manager of M/s Gopal Builders and Developers will again try to create a law-and-order situation by causing violence and bodily harm to our employees.

We request for your urgent intervention and protection in this matter.”

5. Admittedly, a Civil Suit bearing No.24 of 2021 is filed by respondent No.2 against M/s. Gopal Builders and Developers. The petitioner is claimed to be Manager of Gopal Builders which is clear from the contents of the complaint. Perusal of the complaint clearly goes to show that there is dispute with regard to the 15meters access

and whether such area falls within the property of the petitioner or that of respondent No.2.

6. It is clear from the material placed on record that by filing a complaint, the respondent No.2 is trying to give colour of criminal proceedings to a purely civil dispute.

7. In the case of *State of Haryana and others v/s. Bhajan Lal and others* (1992 Supp(1) SCC 335), the Apex Court has observed that the allegations in the First Information Report and other materials do not constitute a cognizable offence justifying the investigation by the police or where the allegations if any taken at its face value and accepted do not prima facie constitute any offence, then this Court is justified in quashing the FIR under Section 482 of CrPC.

8. We are of the firm opinion that registration of such FIR when the civil dispute is going on between the parties and it is not proved as to whether parking of two vehicles was in the property of the respondents or on the access as claimed thereby blocking the way of respondent No.2, no purpose would be served by investigating into it.

9. The registration of FIR is clearly an abuse of the process and therefore we allow the petition in terms of prayer clause 'a' which reads thus:

“a) Records and proceedings of the Impugned FIR, i.e. FIR No.16/2023 lodged at the Porvorim Police Station is called for and after pursuing the same Impugned FIR No.16/2023, the alleged complaint and all the actions taken by Respondent No.1 and proceedings initiated pursuant thereto, be quashed and set aside.”

10. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.

M.S. KARNIK, J.

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