

**IN THE HIGH COURT OF BOMBAY, AT GOA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.79 OF 2023

Diago Venancio Pinto, Age 74 years,
so Late Domingos Xavier Pinto,
Indian National, R/o.H.No.755/6/1,
Tina Apartments, Ground Floor (G-1),
Near Corporation Bank,
Alto Porvorim Bardez, Goa
represented by his Power of Attorney
Richard Dionisio Pinto, Age 42 years,
s/o.Diogo Venancio Pinto, R/o.H.No.755/6/1,
Tina Apartments, Ground Floor (G-1),
Near Corporation Bank,
Alto Porvorim Bardez, Goa.

Petitioner

VERSUS

1. Theotimus Pinto,
R/o.H.No.755/15, Sunset View,
Near Corporation Bank,
Alto Porvorim, Bardez, Goa.

2. Mrs.Theodora Pinto
(Respondent nos.1 and 2 are now deceased)

3. Elton D'Zouza s/o.Alan D'Souza,
Age 38 years,

4. Mrs.Zena D'Souza, age 62 years,
All r/o.House No.755/6/2,
Tina Apartments, Ground Floor (G-2),
Near Corporation Bank, Alto Porvorim,
Bardez, Goa.

Respondents

Mr.Sagar Dhargalkar, Advocate for Petitioner.

Ms. Swati Kamat Wagh, Advocate for the Respondent no.4.

Mr. Somnath Karpe, Additional Public Prosecutor for Respondent no.5-State.

Respondent no.3 in person.

CORAM : **PRAKASH D. NAIK, J.**

DATE : 9th November 2023

JUDGMENT :-

1. The Petitioner challenges the Judgment and Order dated 18.04.2023, passed by the Additional Sessions Judge, Mapusa, in Criminal Revision Application No., 28 of 2021 and the Judgment and Order dated 12.03.2021, passed by learned Judicial Magistrate First Class 'D' Court, at Mapusa, Goa, in Criminal Case no. 10/P/2008/D.
2. The Petitioner filed a private complaint before the Court of learned Judicial Magistrate First Class alleging offences under Sections 323, 342, 442, 445, 447, 452 and 506(ii) r/w Section 34 of the Indian Penal Code (IPC).
3. Respondent nos.1 to 4 were arraigned as accused. Respondent no.1 was accused no.1. Respondent no.3 was accused no.2. Respondent no.2 was accused no.3 and Respondent no.4 was accused no.4.
4. Accused no.1 was the brother of complainant. Accused no.2 is the nephew of complainant. Accused no.3 was the mother of complainant. Accused no.4 is the sister of complainant.
5. Accused no.1 and accused no.3 had expired.
6. The allegations spelt out in the complaint are as follows :-

(i) Complainant is the brother of accused nos. 1 and 4, uncle of accused no. 2 and son of the accused no.3;

(ii) The father of Complainant Mr. Domingos Xavier Pinto expired on 27.09.1999 without leaving any disposition of his estate and leaving behind accused no.3 as his wife, accused no.1 and the Complainant as his sons, accused no.4 and Mrs. Flavia Azavedo as his daughters;

(iii) The father of the accused along with his wife, accused no.3, were the owners of the property at Alto Porvorim within the limits of village Panchayat Socorro, known as GAICHE GALCHO MATO or GAICHE GOLACHO MATO, surveyed under no. 391 described in the Land Registration Office of Bardez;

(iv) Prior to the death of the father of the Complainant, the owners of the property i.e. the father of Complainant and accused no.3 executed a Power of Attorney in favour of Complainant dated 14.10.1983 thereby giving him absolute rights of administration in respect of all properties of late Mr. Domingos Xavier Pinto

(v) Prior to the death of the father of the Complainant, the owners of the property i.e. the father of complainant and accused no.3 had entered into an Agreement for Development-cum-Sale dated 18.07.1994 with Complainant. Vide said Agreement, the owners of the property gave the Complainant full power and authority to develop the property by constructing buildings thereon at the costs of the Complainant;

(vi) The Complainant developed the property by constructing buildings. As per the terms and conditions of the agreement, the Complainant allotted to the owners two residential flats and two shops in the building 'Peace Heaven 'B' viz Flat no. G-1, S-3 and shop no.3 and 4 and also paid to the owners the amount of Rs.5,35,000/- in consideration of which the owners of the property i.e. the deceased father of the Complainant and accused no.3 renounced their rights in the property;

(vii) Upon completion of the development works, it was agreed between the owners of the property, i.e. the deceased father of the Complainant and the accused no.3, that the Complainant would keep one flat in the building Peace Heaven 'B' for himself and hence the Complainant has been in peaceful possession of the flat bearing no. 755/10(8) until 03.01.2008;

(viii) The accused no.2, who is the son of accused no.4 and the nephew of the Complainant was working in Dubai. Somewhere in the month of November, 2006, he left his job in Dubai and came to stay in the house of accused no.3;

(ix) In December, 2006, all the co-owners of the property sold a part of the property admeasuring an area of 4744 square meters and the proceeds of the said sale were allotted to all the co-owners in proportion to their share;

(x) The accused no.2 started provoking the other co-owners of the property including accused nos. 1, 3 and 4 against the Complainant on a pretext that the Complainant had cheated the

other co-owners of the property by dealing in the property in an unfair manner and making gains for himself;

(xi) The other co-owners provoked by accused no.2 got greedy and in connivance with each other and in furtherance of common intention and forcefully dispossessed the Complainant from the flat bearing no. 755/10(8) in the building Peace Heaven 'B' on 3-1-2008;

(xii) The Complainant was in bona fide long standing possession of the said flat. The complainant had fixed various fixtures and fittings in the said flat including valuable electrical appliances;

(xiii) The Complainant filed a Civil Suit bearing RCS No. 162/07/A, which is pending before the Civil Judge, Senior Division at Mapusa. The Court passed Order dated 05.01.2008 directing both the parties to maintain status quo in respect of illegal constructions raised by the accused in the property till the pendency of the application for temporary injunction;

(xiv) All the accused with criminal intentions and in furtherance with common intention, opened the lock attached on the door of the flat with the help of carpenter on 03.01.2008 and forcefully entered into flat without permission of Complainant. The Complainant was inside his house in Tina Apartments and the daughter of the complainant who had gone out and was returning, noticed the accused persons gathered at the door of the said flat and immediately came and informed the complainant about the same. The complainant instructed his wife and daughter to stay in the flat at Tina apartments and rushed to the said flat where the accused

nos. 1 and 2 were present and accused nos. 3 and 4 were already inside the flat and had latched the door of the said flat;

(xv) When the Complainant questioned his brother i.e. accused no.1, he charged towards him with rage and anger and with clinched fists and the accused no.2 along with Baretto held the Complainant by his hands and dragged him outside the building on the road, causing hurt and abused him with filthy words. The accused no. 2 pushed the Complainant with both his hands in the presence of accused no.1 and said Baretto, due to which the Complainant fell on the ground and hurting himself in the process. The accused no.2 and Baretto threatened the Complainant of dire consequences. He was threatened that if he visits the flat again, he will be killed. Hearing the commotion, the wife and daughter of the Complainant came running outside on the road and saw the Complainant trembling with fear and apprehending that things might get out of hand, the Complainant being senior citizen and heart patient, the wife took him away to Tina Apartments. The incident was witnessed by the wife and daughter of the Complainant and other persons;

(xvi) The Complainant then contacted his Lawyer and visited Porvorim Police Station to lodge a complaint against the accused;

(xvii) The accused had lodged a pre-planned false complaint against the Complainant. Police refused to take any action against the accused and instructed the Complainant to bring the title documents in respect of the said flat. The Complainant gave a written complaint to the Police on 3-1-2008;

(xviii) The Complainant was out of possession of the flat since 03.01.2008. On 05.01.2008, the accused no.2 came to the flat of Complainant at Tina apartment with police personnel and falsely alleged that the complainant threw stones at the labourer;

(xix) The Complainant addressed letter dated 07.01.2008 to DSP Porvorim reiterating the facts of incident dated 03.01.2008 and 05.01.2008 with a request to take action against the accused;

(xx) On 09.01.2008, when the accused nos. 1 and 2 were in the process of shifting their sofa set in the said flat of the Complainant, the wife of the Complainant tried to enter the said flat in order to meet accused no.3, who is the mother of the Complainant. Accused nos. 1 and 2 caught hold of Complainant's wife and threw her down on the staircase of the building and hurting her. Accused no.2 held the wife of complainant and shook her violently and abused her. The accused nos.1 and 2 closed and locked the gate on the main entrance of the building;

(xxi) Information was given to the police. Police called accused nos. 1 and 2 along with Complainant and his wife to the Police Station. Wife of Complainant was sent to Asilo Hospital for medical check-up. Statement of wife was recorded in Marathi by way of non cognizable complaint with different facts than narrated by his wife. Police did not take action against the accused. Police warned both the parties and told them to go home. The complainant addressed a letter dated 9-1-2008 to the Superintendent of Police, Porvorim about high handed acts of the accused and requesting the addressee to take action. The complainant lodged another complaint

on 12-1-2008. The private complaint was filed on 14-1-2008 and prayed that process be issued against the accused u/s.323, 342, 442, 445, 447, 452 and 506(ii) of IPC.

7. The Court took cognizance of the complaint. Summons was issued to the accused. Evidence before charge was recorded. The Complainant examined himself before the Magistrate as PW-1. Ernesta Pinto was examined as PW-2 and Maria Pinto was examined as PW-3. All of them were cross-examined.

8. The learned Judicial Magistrate First Class, vide Judgment and Order dated 12.03.2021, discharged accused nos. 2 and 4. Accused nos.1 and 3 had expired. The said Order was challenged by the Petitioner by preferring the Criminal Revision Application no. 28 of 2021. Vide Judgment and Order dated 18.04.2023, the revision application was dismissed.

9. Learned Advocate for the Petitioner at the outset submitted that the Respondent no.4, is his sister. On humanitarian grounds he did not want to pursue the proceedings against Respondent no.4. She can be exonerated from the proceedings. However, the Respondent no.3 is the main accused and no sympathy should be shown to him. The Respondent no.3 is involved in commission of crime. There was no reason for discharging him from the prosecution. The case for framing of charge was made out. At the stage of framing charge, the Court cannot consider the defence of the accused. There is sufficient evidence to show involvement of the accused. The Courts below have misread the evidence on record. The Orders show non-application of mind. To attract Section 441 of IPC, the aggrieved person need not be the owner of the property. This is a clear case of misreading the documents on record. The Courts below proceeded

on the basis that flat no. G-1 was handed over to the accused although flat no. G-2 was being handed over . The Courts have misread it as G-1. The trial Court has wrongly concluded that the dispute is of civil nature. Assuming that there are some civil facets to the dispute, it cannot be said that the offence is not made out against the accused. In the present case, all the ingredients to constitute the offences were made out. If the *prima facie* case is made out, the Court had no other option but to frame the charge. At the time of framing of charge, the Court is not supposed to hold the trial. Evidence before charge was recorded. The evidence discloses *prima facie* case against the accused. There was no question of declining to frame charge on the basis of evidence. At the stage of framing charge, the Court is required to evaluate material on record only with a view to find out whether the facts emerge therefrom taken at their face value, disclose the existence of ingredients of offence. The Court is not expected to go deep into the matter and hold that the material would not warrant conviction at this preliminary stage of framing charge. The Complainant had made out a case of strong suspicion against the accused. The Courts below have not considered the evidence on record. The Courts have not given weightage to the memorandum of possession. It proved that the flat actually handed over to accused no.3 i.e. mother of Complainant is flat no. G-2 in building known as Peace Heaven. This proves that flat no. G-1 was not handed over to the original accused no.3 i.e. the mother of Complainant and possession of flat no. G-1 always remained with Complainant. The impugned Order shows non application of mind by the Courts. The Court ought to have considered memorandum in possession which is later a point of time rather than giving undue weightage for Agreement for Development

cum Sale dated 18.07.199 while deciding the issue of possession of flat G-1 in building Peace Heave 'B'. The Petitioner produced the documents to show his possession to flat no. G-1. There were witnesses to the incident. Various documents proves possession of the flat by the Petitioner at the time of incident. The ingredients to constitute the offence are made out. There was clear reference to the act and the role played by each of the accused. The evidence of PW-1, PW-2 and PW-3 was ignored by the Courts. The documents adduced in evidence to show possession of subject flat, were not considered by Courts. Both the orders are required to be set aside.

10. Mr. Dhargalkar has relied upon the following decisions :

(i) Asim Shariff vs. National Investigation Agency¹

(ii) Sajjan Kumar vs. Central Bureau of Investigation²

(iii) Indian Oil Corpn. vs. Npec India Ltd & Ors.³

(iv) Md. Ibrahim & Ors. vs. State of Bihar & Ors.⁴

(v) Pratiba Rani vs. Suraj Kumar & Ors.⁵

11. Learned Advocate for the Respondent Ms.Kamat submitted that criminal prosecution was launched out of vendetta. The dispute related to property. Police refused to take cognizance of complaint. Private complaint was filed. Evidence adduced by the Complainant does not make out offence against the accused. The Court was empowered to discharge the accused. The offence of criminal

1 (2019) 7 SCC 148

2 (2010) 9 SCC 368

3 (2006) 6 SCC 736

4 (2009) 8 SCC 751

5 (1985) 2 SCC 370

trespass and/or any other offence is not made out. The learned Magistrate and the learned Sessions Judge has passed elaborate orders supported by reasons for discharging the accused. There is no illegality in the orders passed by the Courts below. There was an Agreement for Development. The dispute is of civil nature. The dispute relates to family property not yet partitioned in Inventory Proceedings. Several proceedings are pending between the parties.

12. Ms. Kamat has relied upon the following decisions :

(i) State of Maharashtra vs. Eknath Yeshwant Pagar & anr.⁶

(ii) Mitesh Kumar J. Sha vs. State of Karnataka & Ors.⁷

(iii) Ramesh S/o. Murlidhar Karale vs. The State of Maharashtra & anr.⁸

(iv) Sreeniwas Agarwal & anr. vs. State of West Bengal & anr.⁹

(v) Sunder Singh vs. State of Madhya Pradesh through GRP Bina¹⁰

(vi) Ajoy Kumar Ghose vs. State of Jharkhand & anr.¹¹

13. The Complainant and the accused are related to each other. There is no debate about the parameters to be considered by the Court at the time of framing of charge. If the evidence on record makes out a *prima facie* case, the Court has to frame charge. In the event the Court finds that there is no material to frame the charge,

6 (1981) 2 SCC 299

7 (2021) SCC OnLine 976

8 Cri.Application no. 2810/2021 of this Court decided on 20.10.2022.

9 (2023) SCC OnLine Cal 2653

10 (2013) SCC OnLine MP 6890

11 (2009) 14 SCC 115

the Court is empowered to discharge the accused. In the present case, although the evidence before charge was recorded, the complainant had adduced documents, he was exhaustively cross examined. The complainant examined his wife and daughter as witnesses. They were also cross-examined in detail. The trial Court as well as revisional court has considered the evidence on record and passed reasoned orders.

14. The Petitioner-Complainant had initially approached the Police for lodging complaint against the accused. Police did not take cognizance of the complaint. The Petitioner filed a private complaint alleging the offences under Sections 323, 342, 442, 445, 447, 452 and 506(ii) of the Indian Penal Code (IPC) read with Section 34 of IPC. Evidence before charge was recorded. The Complainant examined himself as witness no.1. According to the witness, the accused took possession of the flat on 03.01.2008. He referred to development-cum-sale agreement and memorandum of possession and claimed that subject flat was in his possession till he was dispossessed. He referred to incident dated 3-1-2008 and 9-1-2008. He was cross examined at length. Another witness Ernestina Pinto was examined as PW-2. She deposed that accused no.1 is her uncle, accused no.2 is her cousin, accused no.3 is her grandmother and accused no. 4 is her aunt. On 03.01.2008, she visited her father's house. Her father had kept the flat for occupation. The accused trespassed into the flat. She informed about it to her father. She was cross examined. The Complainant examined third witness as PW-3, namely Maria Pinto. She is the wife of the Complainant. She stated that on 03.01.2008, her daughter had gone to the shop. She noticed one person and the accused nos. 1 and 2 at ground floor near their flat bearing no. 755/10(8). She informed about it to her father. He

father went to the spot. The accused started assaulting the Complainant and intimidated him. On 09.01.2008 accused restrained her from entering into flat premises. She was hurt. The witness was also cross-examined.

15. The learned Magistrate vide Order dated 12.03.2021, discharged accused nos. 2 and 4. The learned Magistrate has appreciated the facts in detail and scrutinized the documents on record. The trial Court noted that it is not in dispute that the land in which building Peace Heaven 'B' is constructed, originally belonged to the parents of the Complainant. It is also not in dispute that there is no effective partition of the joint property after the death of father of Complainant. This fact is admitted by PW-1 in his cross examination. It was further observed that the case of the Complainant is that after the completion of development works, it was agreed between the parties and the owners of the property i.e. deceased father of the Complainant and the accused no.3 that the Complainant would keep one flat in the building Peace Heave 'B' for himself and hence the Complainant is in peaceful possession of the said flat on the ground floor. In the cross examination, he has stated that the Complainant and his wife are absolute owners of the flat on the ground floor based on the Agreement of Sale executed between him and his parents. The Complainant has not claimed ownership of the disputed flat. All the time he stated that he was in possession. In the cross examination, he improved his case and claimed himself to be owner of the disputed flat which had not not shown by producing any documents. PW-2 in her cross examination admitted that the flat where incidents of house breaking occurred, is owned by Respondent no.3. upon perusal of Agreement for Development produced by the Complainant, it is seen that the Complainant had

agreed to give two flats bearing no. G-1 and S-3 along with two shops to the parents of the Complainant i.e. accused no.3 and her late husband. There is no mention about giving possession of the flat to the Complainant by accused no. 3 and her husband. Upon perusal of memorandum of possession, it is seen that the Complainant had handed over the possession of the flat to the owner of the land i.e. accused no.3 and her husband. The agreement document produced by the Complainant shows that the possession of the flat was given to accused no.3 and her husband who are owners of the land and parents of the Complainant. It is admitted by PW-1 that there is no effective partition of the joint properties of their parents. There is no material to frame charge under the said penal provision. Section 323 prescribe punishment for voluntarily causing hurt and Section 352 provides punishment for using criminal force or assault. Section 341 refers to wrongful restrain and Section 506(ii) provides punishment for criminal intimidation. The learned Magistrate after analysing the evidence on record, has given a finding that there is no material to frame charge against the accused nos. 2 and 4. It was observed that the documents produced by the Complainant do not support his case. Complaint dated 03.01.2007 mentions the year as 2007 whereas the alleged incident is of 2008. The said complaint does not disclose any ingredients of Section 323, 352, 341, 442 and 506(ii) read with Section 34 of IPC. In the complaint at Exhibit C-7, there is no whisper of any assault done to the Complainant or causing any hurt or threat of any dire consequences made by the accused. The said complaint and the first hand information was provided by the Complainant to the Police after consulting his Lawyer. This complaint forms basis of Complainant's case. This complaint does not clearly state about the acts done by the accused to the

Complainant. The subsequent complaint at Exhibit C-87 shows improvised version of previous complaint. Although PW-3 was referred for medical examination, as stated by Complainant, no hurt certificate or medical report was produced to establish that PW-3 was assaulted. I do not find any infirmity in the order passed by the trial Court.

16. The Order passed by the learned Magistrate was confirmed by the Sessions Court. The Sessions Court has analysed the evidence adduced before the trial Court and held that the evidence on record falls short even to consider the case to frame charge against accused nos. 2 and 4. The Sessions Court had observed that the property belonged to parents of complainant and the accused nos.1 and 3. The complainant claims to be in possession of disputed flat. In cross-examination he claimed that he is exclusive owner of the flat. Whereas PW-2 admits in cross-examination that flat belongs to accused no.3. PW-1 produced agreement for development which shows that it was agreed to give two flats bearing No.G-1 and S-3 along with shops to owners i.e. accused no.3 and father of complainant. There is no mention of giving possession of flat to complainant by accused no.3 and her husband. Memorandum of possession shows that complainant had handed over possession of flat to owner. Bills of washing machine does not specify house number of flat number. Water bill shows different flat number than stated by complainant in complaint. In Electricity bill there is no house number. The complainant admitted that bill pertains to staircase and the pump. House tax receipt bears House No.755/(8). PW-1 admitted that he is the developer of said property and has obtained the licence including occupancy certificate in his name and that the house tax receipts are based on his occupancy certificate. As

far as possession of disputed flat is concerned, there are contradictions in the testimony of PW-1, PW-2 and PW-3. Considering that the witnesses have not supported each other and there are discrepancies in their evidence, the fact of possession of disputed flat is not shown prima facie by complainant.

17. Complainant (PW-1) in the private complaint dated 14-1-2008 has stated that it was agreed between the owners of property that complainant would get one flat in the building Peace Heaven for himself and hence the complainant has been in peaceful possession of Flat No.755/10(8) till he was dispossessed. In the same complaint it is stated that as per the terms and conditions of development-cum-sale agreement, the complainant allotted to the owners two residential flats and two shops in the building Peace Heaven 'B' namely Flat Nos.G-1, S-2 and Shop nos.3 and 4 and also paid to the owners an amount of Rs.5,35,000/- in consideration of which owners had renounced their right in the property. In the said complaint there is no reference to the memorandum of possession. In the examination-in-chief the complainant (PW-1) has deposed that he was in possession of four shops and flat no.75/10/8. The complainant did not state that the owner was handed over possession of Flat No.G/2 situated on the ground floor of the building Peace Heaven. Complainant refers to incidents dated 3-1-2008 and 9-1-2008. The complainant had relied upon documents to claim that he was in possession of the subject flat. In the cross examination he has admitted that complaint is based on ownership of flat of which complainant and his wife are absolutely owners. His ownership is based on agreement of sale executed between him and his parents. This version was reflected for the first time in the cross-examination. He admitted that no sale deed was executed as per

Clause-4, although it was agreed to convey and transfer in favour of developer and his nominees the rights in respect to plots. He admitted that suit is filed by the accused and he filed a counter claim for which written statement was filed by Plaintiffs wherein it was contended that agreement for development-cum-sale is forged and fraudulent. He admitted that he did not file the suit for enforcement of agreement for sale. He did not have originals of agreement for sale and memorandum of possession. Those documents are with his mother. He did not write any letter to the accused to retain originals of both the documents as he has copies of the documents. He admitted that litigations are pending between him and the accused in respect of joint family properties including family proceedings. He stated that he is staying in Tina Apartments. He also stated that he is staying in both places. In the complaint dated 3.1.2008 it is not mentioned that accused assaulted him and thrown him out of flat or that he was abused by saying that flat does not belong to him. It is also not mentioned in the said complaint that accused pushed him and he fell down. The name of accused no.4 is not mentioned in the said complaint. He had referred to the names of two other persons who had committed the offences but they are not implicated as accused in the private complaint. When the incident took place on 9-1-2008 he was at his flat in Tina Apartments. He has not produced any proof to show that he had taken his wife to the hospital on 9-1-2008. He has not produced the water bill for the flat bearing no.755/10/8. It is not mentioned in the complaint dated 9-1-2008 that accused assaulted his wife and confined her in the gate of staircase area and locked her. It is also not mentioned that accused tore her dress and assaulted her. It is not mentioned in the

complaint dated 3-1-2008 that his daughter has noticed the accused taking possession of the flat by breaking open the lock and lath.

18. PW-2 is the daughter of complainant. She stated that on 3-1-2008 she stated that she used to stay in the flat in which accused has dispossessed. It is pertinent to note that this version of the witness is contradictory to the evidence of PW-1. PW-2 further stated that she was using flat for her studies. Her father had kept the flat in her occupation. She used to take stitching orders in the said flat. She saw the accused break opening the flat. In the cross-examination she stated that her father told her about existence about agreement. She did not know that her grand parents inserted in sale deed in favour of her father. She used to stay in the flat alone. She had no idea as to how many people were present in the building when the alleged incident had occurred.

19. PW-3 is the wife of complainant. She deposed that her daughter noticed that accused and others were present on the ground floor near Flat No.755/10/8 on 3-1-2008 and cutting the latch of the doors. She informed the incident to her father. The complainant then went to the spot. He was assaulted and intimidated. She further deposed that on 9-1-2008 she went to the flat. She wanted to meet her mother-in-law. She was assaulted by accused no.1. The gate was locked and she was confined inside the gate. Complainant went to police station and lodged the complaint. In the cross-examination she stated that their correspondence is received in Tina Apartments. Their kitchen is in Tina Apartments. She regularly cook in Tina Apartments. Her husband used to spend night in the flat in Peace Heaven. She was locked on 9-1-2008 by Mr.Dilano Azavedo She was confused and had given his name but

she did not know why he was not made an accused. She was assaulted by accused nos.1 and 2. One Baretto assaulted her husband. On 5-1-2008 accused had lodged a complaint against them.

20. From the evidence of these three witnesses it is clear that there are contradictions about possession of flat at Peace Heaven by complainant which has been rightly analyzed by the Courts below. The complaints lodged on 3-1-2008 and 9-1-2008 are silent with regards to most of allegations reflected in the private complaint. The agreement for development-cum-sale refers to Flat No.G-1 being handed over to the owner which fact is also reflected in the private complaint. In the memorandum of possession, Flat No.G-2 is being referred being handed over to the owners. The original documents are not produced on record. The complainant had contended that documents were with accused no.3. It is true that Court is required to see that prima facie case is to be made for framing charge. In the present case examination-in-chief and the cross-examination is extensive and Court had occasion to consider the evidence on record and in the light of observations made by both the Courts, the accused were discharged. There is no dispute about the law laid down in various decisions some of which are referred to by learned advocate for Petitioner as well as Respondents. It is not necessary to reproduce the law laid down in the said decisions. It is settled principle of law as to what would be the parameters for considering the application for discharge or principles for framing charge to be considered by the Trial Court. Both the Courts have considered these aspects and I do not find any reason to interfere in the impugned Judgments. The complainant has failed to prove even prima facie that he was in possession of the subject flat and that he was

dispossessed by the accused. There are various disputes between parties. Civil suit is filed. The complainant has converted civil dispute in criminal dispute by filing private complaint. No case is made out for interference in impugned orders.

ORDER

(i) Criminal Writ Petition No. 79 of 2023 is dismissed and disposed off.

(PRAKASH D. NAIK, J.)