

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.87 OF 2023

1 Akshay Rangayya
S/o. Purushetti Rangayya
Aged 20 yrs,
Occupation – Unemployed,
H.No.422, Narvekar Villa,
Caculo Colony 2, Near Goa Marriott Hotel,
Miramar, Panaji- Goa. ...Petitioner

v/s.

1 The State of Goa (through)
Police Inspector
Panaji Police Station
Panaji- Goa

2 Public Prosecutor
High Court of Bombay
At Porvorim, Goa ... Respondents

Mr. Rohan Pandurang Desai with Mr. Bhargav Samant, Advocate
for the Petitioner.

Mr. P. Faldessai, Additional Public Prosecutor for the State.

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

RESERVED ON: 30TH AUGUST, 2023

PRONOUNCE ON : 04th SEPTEMBER, 2023

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

1. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel for the petitioner and the learned Additional Public Prosecutor, the matter is taken up for final disposal at the admission stage itself.

2. Heard learned Counsel Shri Rohan Desai for the petitioner and the learned Additional Public Prosecutor for the State of Goa Shri Pravin Faldessai.

3. The petitioner is praying for substantive reliefs vide prayer clauses (a) and (b) which reads thus:

(a) *A Writ Certiorari or a Writ in the Nature of Certiorari quashing of the second FIR bearing FIR No.43/2023 by Panaji Police Station dtd. 04/03/2023 and declare that the second FIR void and being contrary to law since it relates to an alleged offence in respect of which an FIR has already been filed.*

(b) *Treating the Second chargesheet as a supplementary chargesheet of the first FIR. Bearing FIR No.42/2023 by Panaji Police station dated 04/03/2023.*

4. The petitioner is accused No.2 in Panaji Police Station Crime No.42 of 2023, registered on 04/03/2023. The petitioner is also accused no.1 in another Panaji Police Station Crime No.43 of 2023 registered on 04/03/2023 itself.

5. After completing the investigation, the Panaji Police Station filed two separate chargesheets in two different Courts. In respect of Panaji Police Station Crime No.42 of 2023, a chargesheet is filed before the Children's Court for the offences punishable under Sections 363, 376(3), 354, 323, 328, 419 r/w. 34 IPC and Section 8 of Goa Children's Act, 2003 and Section 4, 8, 12, 21 of the Protection of Children from Sexual Offences Act (POCSO), 2012. In the said chargesheet filed before the Children's Court, the present petitioner is accused No.2 whereas one Mr Javed Aktar Samiulla Ballari is accused No.2 and Mr Navlesh Kumar is accused No.3. The said FIR No.42 of 2023 was registered on the basis of a complaint lodged by Smt. ***** claimed that on 03/03/2023 at around 15.00 hours, unknown accused persons kidnapped her granddaughter, aged 13 years.

6. In respect of FIR No.43 of 2023, the chargesheet is filed before the POSCO Court at Panaji for the offences punishable under Sections 363, 376, 328, and 419 r/w. 34 IPC and Sections 4, 8, 12, 21 of POSCO Act, 2012. In this chargesheet, the petitioner is shown as accused No.1, whereas Mr Javed Aktar Samiulla Ballari and Navlesh Kumar are shown as accused Nos. 2 and 3. FIR 43 of 2023 was registered on 04/03/2023 on the basis of a complaint received from Smt ##### claiming that her minor daughter, aged 16 years, was kidnapped from her lawful guardianship on 03/03/2023 by unknown persons.

7. The chargesheet filed before the Children Court of Goa and the chargesheet filed before the POSCO Court at Panaji, if perused, would go

to show that the victims in both the FIRs were together and they accompanied the accused persons including the present petitioner, on other motorcycles/ scooters to Vasco, returned to Caranzalem, stayed in one hotel during night time and during their such stay in the hotel, they were sexually assaulted. The sameness of the incident in both these chargesheets clearly revealed that the alleged offences in both these FIRs are clearly a part of the same transaction or the same occurrence, and the accused persons, as well as both the victims, were found moving together and then stayed in the same hotel though in different rooms.

8. It appears that the complainant, Smt *****, lodged her complaint on 04/03/2023, stating that her minor granddaughter was kidnapped on 03/03/2023. Such a complaint was lodged at Panaji Police Station itself. Immediately thereafter, Smt. ##### lodged her complaint, stating that on 03/03/2023, some unknown person kidnapped her minor daughter. Such a complaint was registered under FIR No.43 of 2023.

9. Investigation in both these FIRs shows that both the victims and the accused persons were traced. The victims were rescued, and the accused persons were taken into custody. During the investigation, the statements of both victims were recorded by the police in the presence of the NGO and thereafter before the Magistrate under Section 164 of CrPC. A perusal of the statements would go to show that both the victims were together when the accused persons approached them. Similarly, the victims accompanied the accused persons in both FIRs on their two-wheelers, proceeded to Vasco and returned to Panaji. After the accused persons gave

some intoxicated drugs to both the victims, they were taken to one hotel wherein one of the victims stayed along with the present petitioner in one room, whereas another victim accompanied the other accused by the name Javed Akhtar Samiulla Ballari, in another room.

10. The victim i.e. the daughter of Ms #####, is 16 years and above, stayed with the present petitioner in one room wherein it is alleged that the petitioner sexually assaulted her. The allegations regarding another accused by the name Javed Akhtar Samiulla Ballari is that he stayed with the victim in FIR No.42 of 2023 i.e. 13 years old granddaughter of Smt *****, wherein she was also sexually assaulted.

11. The entire chargesheets in both these matters show common witnesses except a few separate witnesses, including the doctors. The entire incident, which is reported in both the FIRs and investigated, clearly goes to show the reference to the same transaction and same occurrence.

12. It appears from the records that since two FIRs were lodged and separate investigations were carried out, and one of the victims is a child of around 13 years, the chargesheet in respect of such victim is filed before the Children's Court, whereas the victim in FIR No.43 of 2023 who is above 16 years is not considered to be a child as defined under the Goa Children Court Act as far as sexual offences are concerned and therefore a separate chargesheet is filed before the POSCO Court at Panaji.

13. Learned Counsel Shri Rohan Desai would submit that the entire incident with regard to both the victims is in connection with the same

transaction and not at all separate so as to register two FIRs and to prosecute the petitioner in two different Courts.

14. The learned Additional Public Prosecutor, Mr Faldessai, fairly accepted that the incident is the same, but since two FIRs were registered with regard to separate victims, the chargesheets have been filed in different Courts.

15. Mr Desai placed reliance on Section 220 of the Code of Criminal Procedure, which reference to trial for more than one offence. He also referred to the decision in the case of **TT Anthony v/s. State of Kerala and others** [(2001) 6 SCC 181] wherein Apex Court, in similar circumstances, observed in paragraph 20 that the scheme of the Code of Criminal Procedure provided that only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of CrPC. Thus, there can be no second FIR and consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.

16. The above observations in the case of T.T. Anthony(supra), are squarely applicable to the facts and circumstances of the matter in hand with the simple reason that two back to back FIRs were registered regarding kidnapping of minor and during investigation it was found that both the victims were together and they were sexually assaulted by the accused persons in the same transaction or occurrence.

17. Mr. Desai then would refer to the case of **C. Maniappan and others v/s. State of Tamil Nadu** [(2010) 9 SCC 567] wherein two FIRs were lodged in connection with the same series of transactions and in such circumstances Apex Court has observed that though two FIRs were lodged, the same second occurrence was known to a fall out of the first occurrence and merely because two separate complaints have been lodged, did not mean that they could not be clubbed together and one chargesheet could not be filed. While observing this, reference was made to T.T. Anthony's case(supra).

18. Mr Desai then placed reliance on **Amitbhai Anilchandra Shah v/s. Central Bureau of Investigation and Another** [(2013) 6 SCC 348]. The Apex Court observed that when any single conspiracy to carry out three fake encounter killings by police officials or one conspiracy followed by a second conspiracy to carry out fake encounter killings, two charge sheets were filed, which normally amounts to a violation of fundamental rights under Articles 14, 20 and 21 of the Constitution.

19. Mr Desai then placed reliance in the case of **Rajay Kalyan v/s. State through PP and others** Criminal Writ Petition No.557/2021(F) decided on

18/09/2021 wherein one of us (M.S. Sonak, J.) is a party. In this matter, also the sameness of the chargesheet, the incident, the occurrence as well as the offences under which the accused persons were charged were found similar. Therefore, this Court has observed that the second chargesheet could be considered as a supplementary chargesheet to the first chargesheet and the matter could be tried by one Court.

20. In this matter and on perusal of the contents of both FIRs, chargesheets including the statement of the victims, it is clear that the entire incident is part and parcel of the same transaction wherein both the victims were found together with the accused persons from the time they left Panaji till they were brought back on the next day and apprehended by the police and in such circumstances, the registration of separate complaint vide FIR No.43 of 2023 was certainly unwarranted. The investigating agency even while conducting investigation in both FIRs and after recording statements of the victims certainly knew that the entire episode is in connection with the same transaction or occurrence.

21. At this stage, we are also conscious of the fact that the other two accused persons in both these chargesheets are not before us. Only the petitioner who is one of the accused in both the chargesheets preferred the present petition. However, by the order which we propose to pass, no prejudice will be caused to the other two accused persons even though they are not before us.

22. Though chargesheets have been filed before different Courts and probably by this time, the cognizance must have been taken by the

respective courts, it would be improper to direct the concerned Court for clubbing both the matters together.

23. Instead of this, we think it proper to direct the Investigating Officer, to move the learned Session Judge, North Goa Panaji under Section 408 of CrPC with a request to transfer the chargesheet filed before POSCO Court to the Children Court at Panaji, within its jurisdiction. Learned Children's Court shall on receipt of such chargesheet, consider this as a supplementary chargesheet. The Investigating Officer is required to file the necessary application firstly before the learned Sessions Judge, Panaji for transfer and then before the learned Children's Court. Once such transfer is ordered, a chargesheet in connection with FIR No.43/2023 shall be placed before the Children's Court who shall consider it as a supplementary chargesheet, needless to say, on an application filed by the investigating agency to that effect. The learned Children's Court shall thereafter try the matter in accordance with law but in connection with the original chargesheet together with the supplementary chargesheet.

24. The rule is made absolute in the above terms. The parties to act on an authenticated copy of this judgment.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

MEENA
VISHAL
BHOIR

Digitally signed by
MEENA VISHAL
BHOIR
Date: 2023.09.04
18:36:55 +05'30'