

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.181/2019

1. JOAO C. PEREIRA,
s/o Ligorio Pereira, Indian
National, major of age, R/o
H.No.40, Axona, Utorda, Salcete
Goa.

2. MR JERVASIO PEREIRA,
s/o Ligorio Pereira, Indian
National, major of age, R/o
H.No.40, Axona, Utorda, Salcete
Goa.

... PETITIONERS

Versus

1. STATE OF GOA, through
Police attached to Verna Police
Station, Verna, Goa.

2. SHRI ALEIXO ARNOLFO
PEREIRA, major of age, R/o.
H.No.150, Utorda, P.O. Majorda,
Salcete, Goa.

3. STATE through Public
Prosecutor, High Court of
Bombay at Goa, Panaji Goa.

... RESPONDENTS

Mr Galileo Francisco Teles, Advocate *for the Petitioner.*

Mr Pravin Faldessai, Additional Public Prosecutor *for the State.*

Mr Dhaval Zaveri with Mr Nehal Govekar, Advocates *for Respondent No.2.*

**CORAM: M. S. SONAK &
M. S. KARNIK, JJ.**

DATED: 20th April 2023

JUDGMENT: (Per M. S. Sonak, J.)

1. Heard Mr Galileo Teles for the petitioners, Mr Pravin Faldessai, learned Additional Public Prosecutor for the State and Mr Dhaval Zaveri for respondent no.2.

2. The petitioners, arraigned accused nos.1 and 2, seek quashing of Charge-sheet No.6/2015 filed in the Court of the Judicial Magistrate First Class at Margao (JMFC) in FIR No.68/2014 and the proceedings in Criminal Case No.292/S/2018/I before the learned JMFC at Margao.

3. Mr Teles, the learned counsel for the petitioners, submits that the uncontroverted allegations made in the FIR and the charge sheet do not disclose the commission of any cognizable offence. Therefore, relying on *State of Haryana & Ors. vs Bhajanlal & Ors.– 1992 Supp (1) SCC 336*, Mr Teles submits that the impugned charge sheet and FIR may be quashed.

4. Mr Teles submits that in the past, respondent no.2 has filed similar frivolous complaints, some of which were quashed by this

Court. He refers to the decision of this Court dated 10.06.2016 in Criminal Writ Petition No.130/2015.

5. Mr Teles submits that the investigating agencies, after investigations, had filed an 'A' Summary Report before the learned JMFC. This was because there was no evidence whatsoever based upon which the charges alleged against the petitioners could ever be proved. He submits that this is an additional factor based upon which the impugned charge sheet and the impugned FIR must be quashed.

6. Mr Teles submits that the complainant has admitted that the alleged incident occurred on the petitioners' property. Mr Teles, therefore, offers that the exception to Section 339 of the Indian Penal Code (IPC), which deals with "*wrongful restraint*", is clearly attracted. Accordingly, based upon the same, no offence under Section 339, which is punishable under Section 341 of the IPC, can be said to have been made out against the petitioners.

7. Mr Teles submitted that the complainant, in his complaint, stated that he was not provoked in any manner and that he sat peacefully in his car for about fifteen minutes. Mr Teles submits that in the absence of any serious provocation, offences under Sections 504 and 506 cannot be said to have been made out. Mr

Teles presents that the ingredients of Section 427 of IPC are also not fulfilled. For all these reasons, Mr Teles submits that the impugned charge sheet and the impugned FIR must be quashed.

8. Mr Pravin Faldessai and Mr Dhaval Zaveri submit that the ingredients of the offences for which the petitioners are charged have been duly made out. They submit that the issue as to whether the petitioners are entitled to benefit from the exception to Section 339 of IPC is a matter that will have to be examined after trial and not at this stage. They submit that the onus of proving the exception shifts on the petitioners. Finally, they submit that the 'A' Final Summary Report was not accepted by the learned JMFC by order dated 13.07.2018, to which there is no challenge, assuming that such a challenge was permissible. For all these reasons, Mr Faldessai and Mr Zaveri submit that this petition may be dismissed.

9. The rival contentions now fall for our determination.

10. The impugned FIR is based upon respondent no.2's complaint dated 04.06.2014. The complaint is transcribed below for the convenience of reference:-

“

*Aleixo A. Pereira
150 – Utorda-Margao
Salcete – Goa.*

04/06/2014

*To,
The P.I.
Verna Police Station*

*Sub: Complaint against Mr Joao C. pereira and Gervasio
Pereira, both residents of Utorda, Near Casa Ligorio*

Sir,

*The undersigned had gone to meet Mr. Ali and Mr. Rahul
at around 12.05 afternoon to Ramesh Hotel – Utorda.*

*That after meeting, the said two persons and while coming
back. Just near Casa Ligorio Hotel, one white colour
Maruti 800, driven by Gervasio was moving at snail's pace.
That my car had to slow down and follow the said Maruti
800 for about 75 Mts. That exactly opposite to the
entrance of J – The Top Restaurant, Mr. Gervasio stopped
his car and parked it across the Road and blocked my car
forcibly. At this juncture, Mr Joao C. Pereira ad Gervasio
Pereira both started shouting near my driver's side door
and abusing me with bad filthy words and threatening me
by saying 'Bastard come out chedichea' we will kill you just
now.*

*I sat peacefully in my car for nearly 15 minutes, than
exactly at 12.30 and further 12.33, the undersigned
phoned Mr. Karpe Police Inspector of Verna Police Station
and informed of the incident and that I am being way
layed on the Road to Ramesh Hotel. That Joao C. Pereira*

further took a bamboo stick and banged the same on the front bumper of my Mercedes Benz Car. The bumper of the car is damaged and can be inspected. The damage can be noticed below the right turning indicator light.

Sooner the Verna Police Jeep arrived on the spot and they then inquired with the agitated Joao and his brother.

Further, I came to the Police Station and lodge my above Complaint against Joao C. Pereira and Gervasio for threatening my life with dire consequences and further firing bad and filthy words/language.

*Sd/-
Aleixo Pereira"*

11. In the complaint, there are allegations about the petitioner obstructing the complainant and preventing him from proceeding in the direction in which the petitioner claims he had the right to proceed. At least in the complaint, nothing indicates that the obstruction was over a private way. The complaint states that the incident occurred exactly opposite J-Top Restaurant's entrance, where the second petitioner blocked the complainant's car forcibly. There are allegations that the petitioner started shouting near the complainant's driver-side door, abused the complainant with filthy words, and threatened to kill the complainant. Even details of the bad words have been spelt out in the complaint.

12. Thus, it is incorrect to allege that the ingredients of Section 339 of IPC have not been made out in the complaint. Whether the petitioners' case falls within the exception to Section 339 of IPC is a matter that will have to be tested after the evidence is led. Typically, the onus of proving an exception shifts to the accused. The accused can no doubts rely upon the material brought on record by the Prosecution for this purpose.

13. Mr Teles relied upon a statement in the charge sheet allegedly made by the complainant about no witnesses being present at the reference site since the property belongs to one of the petitioners. Based only on this statement, it is difficult to hold that the ingredients of Section 339 of IPC have not been made out in the complaint or that the case of the petitioners falls within the exception of Section 339 of IPC.

14. The complaint also *prima facie* discloses the ingredients of Sections 504 and 506 of IPC. The contention that the complainant, despite provocation, could sit in his car peacefully for fifteen minutes does not mean that there was no provocation sufficient for the commission of offences under Sections 504 and 506 of IPC. Ultimately, these matters will have to be tested during the trial.

15. Similarly, there is an allegation about the petitioners banging a bamboo stick on the front bumper of the complainant's car and damaging it. These allegations are sufficient for invoking Section 427 of IPC.

16. Mr Teles relied upon paragraph 102(3) of Bhajanlal's decision, which reads as follows:-

"102(3) – Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

17. In the present case, the uncontroverted allegations made in the FIR or the complaint disclose the commission of offences the petitioners allegedly committed. Merely because the investigating agencies may have filed the 'A' Final Summary Report or that no other witnesses have come forward to give their statements is insufficient to quash the charge sheet or the FIR. The learned JMFC, while rejecting the 'A' Final Summary Report and issuing summons to the petitioners to face trial, has observed that the complainant's evidence could be vital in such matters.

18. Accordingly, we are satisfied that no case is made for quashing the impugned charge sheet or the impugned FIR. The

uncontroverted allegations, at least *prima facie*, constitute the offences for which the petitioners are now charged. In *Bhajan Lal (supra)*, the Hon'ble Supreme Court has held that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of the rare cases. At this stage, the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

19. Considering the limited scope of jurisdiction in these matters and the fact that the complaint/charge sheet discloses *prima facie* the commission of offence for which the petitioners have been charged, no case is made out for grant of any relief petition.

20. However, we clarify that the observations in this Judgment and Order are only for deciding whether any case was made out for quashing the impugned charge sheet and the impugned FIR. Therefore, these observations should not be taken into account during the trial. Accordingly, the learned JMFC should decide the criminal case against the petitioners strictly based on the evidence produced and without being influenced by such observations.

21. Accordingly, this petition is dismissed. However, there shall be no order for costs.

22. The interim orders, if any, are vacated.

M. S. KARNIK, J.

M. S. SONAK, J.

SUCHITRA Digitally signed by
NANDAN SINGBAL
Date: 2023.04.21
15:46:05 +05'30'