

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.9 OF 2022

MR. RUDOLF FERNANDES, ...Petitioner
S/o. Mr. Luis Fernandes,
Age 56, Indian National R/o. H. No. 1310/1,
Bairo Bandir, Santacruz, Tiswadi, Goa.

Versus

1. STATE OF GOA,
Through Police Inspector/Officer in Charge, CID
Crime Branch, Ribandar, Goa. ... Respondents

2. THE PUBLIC PROSECUTOR,
Office of the Public Prosecutor, Althinho, Panaji,
Goa.

3. THE DEPUTY COLLECTOR (REVENUE),
Collectorate Building, Panaji – Goa – 403 001

Mr Amberish Gavandolkar, Advocate for the Petitioner.

Mr Gaurish Nagvenker, Additional Public Prosecutor for the Respondent
State.

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

Reserved on: **16th JANUARY, 2023**

Pronounced on: **18th JANUARY,2023**

JUDGMENT (Per BHARAT P. DESHPANDE,J.)

1. Rule. Rule returnable forthwith. With consent, the matter is taken up for final disposal.

2. The petitioner preferred the present petition under Section 482 of CrPC together with Article 226 of the Constitution of India thereby

challenging the FIR No.14 of 2019 registered at Crime Branch Ribandar under Section 409, 420 r/w 34 of IPC on the ground that such FIR is registered only with malafide intentions and to take revenge since the petitioner was opposing mega projects in his village.

3. Heard Mr Ambrish Gavandolkar, learned Counsel for the petitioner and Mr G. Nagvenkar, Additional Public Prosecutor for the respondent - State.

4. Learned Counsel for the petitioner submitted that the ancestors of Mrs Gunavanti Monteiro and others were the owners of the property. However, somewhere in the year 1970 said properties were surveyed under the new survey and allotted Survey No.43/3, 44/1 and 44/3. On 03/04/1996, Mrs Gunavanti Monteiro sold the said property to the petitioner. Somewhere in 2008, Civil Suit was filed bearing No.32 of 2008 alleging that the heirs of Antonio Manuel Monteiro be declared as owners. The said suit was settled by way of filing Consent Terms and on 03/07/2015, Consent decree was passed. The Deed of Ratification and confirmation of Sale was executed between the petitioner herein and Mrs Gunavanti Monteiro and other heirs.

5. Somewhere in January 2019, the petitioner organized a protest near Chimbel Lake against burning of many trees and the construction of an illegal road by the Government in Chimbel village. The Revenue Minister in his interview stated that he will form a Special Investigation Team to investigate land grabbing by the petitioner at Chimbel. Accordingly, an FIR was registered on 31/01/2019 against the petitioner

and others thereby alleging the offences under Sections 409, 420 r/w. 34 of IPC.

6. The learned Counsel for the petitioner pointed out that the complainant was lodged by the Mamlatdar of Tiswadi Goa dated 31/01/2019 wherein no ingredients of Sections 409, 420 r/w. 34 of IPC are made out for the registration of FIR. He would submit that from the date of such registration of FIR, till date investigation is claimed to have been conducted by SIT but no charge sheet is filed and the only ploy to keep the FIR pending against the petitioner for stopping him thereby raising the public issues. He submitted that the contents of the complaint filed by the Mamlatdar of Tiswadi clearly goes to show that the petitioner's name is specifically included along with Gunavanti Monteiro and other Government officials. He would submit that from the last 3 ½ years, there is absolutely no progress as there is no case found against the petitioner and till date so-called Government Officer including their names are not added as an accused person.

7. Learned Additional Public Prosecutor would submit that investigation is going on and the same is at the final stage. However, a reply filed on behalf of the Investigating Officer state that apart from the petitioner and Gunavanti Monteiro as disclosed in the FIR, no other name as an accused is found to be added. Vide order dated 01/02/2019, SIT was formed including three Senior Police Officers. However, till date, no chargesheet is filed.

8. The learned Additional Public Prosecutor placed reliance on the following decisions:

1. *M/s. Neeharika Infrastructure Pvt. Ltd. V/s. State of Maharashtra and others*¹

2. *Central Bureau of Investigation and Anr v/s. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr.*²

3 *State of Karnataka and Another v/s. Pastor P. Raju*³

9. In the case of *M/s Neeharika Infrastructure*(supra), following points emerges:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

¹ AIR 2021 SC 1918

² 2021 ALL SCR (Cri) 2031

³ (2006) 6 SCC 728

- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be*

considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

10. In the case of ***Central Bureau of Investigation and Anr v/s. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr.***(supra), Supreme Court observed that while considering the case for quashing of FIR, Court has to look into and ascertain whether FIR prima facie makes out of commission of a cognizable offence and at this stage, the documents relied by the accused cannot be looked into.

11. Keeping in mind the above-settled proposition of law the complaint in the present matter dated 31/01/2019 filed by the Mamlatdar of Tiswadi Taluka, if perused carefully, would go to show that contents therein are not at all sufficient enough to consider the ingredients of Sections 409 and 420 of IPC made out against the

petitioner in any manner. The details of the transactions between Gunavanti Monteiro and the petitioner are also found mentioned therein. The name of the Government of Goa was recorded in the occupant's column along with Gunavanti Monteiro for Survey No.43/3 of village Chimbél. Whereas the name of the Government of Goa is found recorded in the occupant's column along with the petitioner for Survey No.44/1. The mutation proceedings were filed on the basis of the Sale Deed, which is also found mentioned in the said complaint. However, it is thereafter claimed that the name of the Government is not reflecting for Survey No. 44/1-A of village Chimbél which was partitioned after the mutation proceedings. He further admitted that the name of Government of Goa is appearing in Survey No.44/1. Thus, looking at the complaint itself, ingredients of Sections 409 and 420 of IPC are not at all attracted qua the petitioner is concerned.

12. Section 409 of IPC deals with criminal breach of trust by a public servant, or by banker, merchant or agent. It provides that whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

13. Section 415 of IPC deals with cheating and provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person

so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

14. First of all reply affidavit filed on behalf of Investigating Officer nowhere shows that after the registration of FIR on 31/01/2019, against the petitioner (accused No.1), Gunavanti Monteiro(Accused No.3) and Government Officials and others, no specific name of any of accused either a private person or a Government Officer is added in the list of accused.

15. Along with the reply affidavit, the Investigating Officers have enclosed the letter dated 29/01/2019 issued by the Department of Home and addressed to the Director General of Police thereby directing the decision of the Government to entrust SIT headed by Dy. SP Rank Officer for the investigation into the so-called grabbing of Government land. On 01/02/2019, the Superintendent of Police vide order constituted SIT thereby appointing SDPO Porvorim, PI Crime Branch Ribandar and PSI Ponda PS with direction to investigate the matter in FIR No.14 of 2019.

16. Reply affidavit is filed in the most casual manner by disclosing that statements of various witnesses are recorded and documents have been collected. However, the most important aspect for invoking Section 409

of IPC to name the concerned Government officials who are allegedly involved in such grabbing of land is concerned. When a specific question was asked to the learned Additional Public Prosecutor as to how many Government official's names are included in the list of accused persons, he, on instructions, intimated the Court that till date no name of any Government Official is included as an accused in the present matter. Thus, it is clear from the record itself that apart from the petitioner and Gunavanti Monteiro, no other person has been accused of such land grabbing allegations.

17. We really failed to understand as to why there is so much delay in carrying out investigation of the matter which only deals with one Sale Deed in connection with Survey Nos.43/3, 44/1 and 44/3 of village Chimbhel. If the SIT consists of the Dy. SP is unable to investigate and file a chargesheet after a period of four years, would clearly suggest that such investigation is only an eyewash and an abuse of the process of law so that sword of the FIR should be kept hanging for an indefinite period on the head of the petitioner.

18. Inherent powers under Section 482 of CrPC, therefore, need to be exercised to secure ends of justice and to prevent the abuse of the process of law as apparent on the face of the record. In the present matter, the prayer is for quashing of FIR and, therefore, as discussed in the case of *M/s. Neeharika Infrastructure*(supra) and more specifically in clause No.(xv), we have only considered whether or not the allegations in FIR disclosed the commission of cognizable offence and we are not

considering whether allegations make of cognizable offence or not, on merit.

19. Having said so, the facts of the present matter clearly go to show that the contents of the complaint filed by the Mamlatdar of Tiswadi are basically in connection with a civil dispute wherein the mutation entries were carried out on the basis of Sale Deed. Since till date, no public servant's name is found mentioned in the FIR in spite of conducting an investigation for nearly four years, ingredients of Section 409 are not attracted or made out. Similarly, the allegations with regard to cheating under Section 415 of IPC are also found absent. Ends of justice would be met only by quashing the FIR, which to our mind is clearly an abuse of the process of law.

20. The FIR No. 14 of 2019 registered at Crime Branch Ribandar for the offence punishable under Sections 409, 420 r/w. 34 of IPC against the petitioner is hereby quashed. The petition is, therefore, allowed as per prayer clause 'a'.

21. Rule is made absolute in the above terms.

22. Parties to bear their own costs.

BHARAT P. DESHPANDE, J

M.S. SONAK, J.

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VISHAL BHOIR

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