

Meena/Jose

IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL WRIT PETITION NO.64 OF 2021
WITH
CRIMINAL WRIT PETITION NO.65 OF 2021
WITH
CRIMINAL WRIT PETITION NO.20 OF 2019**

CRIMINAL WRIT PETITION NO.64 OF 2021

MR. SANDEEP DATTARAM SALGAONKAR

Son of Shri. Dattaram Salgaonkar,
49 years of age, married,
Indian National and Residing at
H. No.926/1, Near State Bank of India,
Alto Torda, Salvador-Do-Mundo,
Bardez-Goa

... Petitioner.

Versus

1. STATE OF GOA.

Through Public Prosecutor,
High Court Complex,
Porvorim-Goa.

2. POLICE INSPECTOR,

Porvorim Police Station,
Porvorim-Goa.

3. DR. OLAV ALBUQUERQUE,

Major in age, Indian National and
R/at Usha Sadan, Flat SA-A Block,
1st Floor, North Wing, Colaba,

Mumbai, 400003.

... Respondents.

Mr Deepak Gaonkar, Advocate for the Petitioner.

Mr S.G. Bhobe, Public Prosecutor for Respondent Nos.1 and 2.

Mr S.G. Desai, Senior Advocate with Mr Tejas Rane, Advocate for Respondent No.3.

**WITH
CRIMINAL WRIT PETITION NO.65 OF 2021**

MR. RAEES AHMED KHAN

Son of late Shri. Abdul Gani Khan,
50 years of age, married, in business,
Indian National and Residing at
T-4, 4th Floor, Daruis, Avebue, Nomoxim,
Caranzalem-Goa.

... Petitioner.

Versus

1. STATE OF GOA.

Through Public Prosecutor,
High Court Complex,
Porvorim-Goa.

2. POLICE INSPECTOR,

Porvorim Police Station,
Porvorim-Goa.

3. DR. OLAV ALBUQUERQUE,

Major in age, Indian National and
R/at Usha Sadan, Flat SA-A Block,
1st Floor, North Wing, Colaba,
Mumbai, 400003.

... Respondents.

Mr Deepak Gaonkar, Advocate for the Petitioner.

Mr S.G. Bhobe, Public Prosecutor for Respondent Nos.1 and 2.

Mr S.G. Desai, Senior Advocate with Mr Tejas Rane, Advocate for Respondent No.3.

**WITH
CRIMINAL WRIT PETITION NO.20 OF 2019**

Dr Olav Albuquerque,
S/O Basil Albuquerque,
61 years old, Married, Indian National,
Practising Advocate, Resident of Flat
No.5-A, A-Block, First Floor, North Wing
Next to Colaba Post Office,
Colaba Mumbai – 400 005

... Petitioner.

Versus

1. State of Goa
(Through PSI Sagun Sawant)
Porvorim Police Station,
Pundalik Nagar, Alto Porvorim,
Bardez, Goa – 403 521

2. Shri Avinash T. Palni
Secretary of Village Panchayat
Salvador do Mundo, Bardez, Goa

3. Central Bureau of Investigation,
Goa, a Central Investigation
Agency, through its local office
And Local Officer-in-Charge
Bungalow F1, Type VI Quarters,
GMC Quarters, Bambolim.

4. Mr. Sandeep Salgaonkar
H.No. 926, Near State Bank of India,
Alto-Torda, Bardez, Goa.

5. Raees Khan
VL-57, 4th floor, Alfran Plaza,
Opp. Hotel Marva, MG-road Panaji
Goa.

6. Mr. Deepchand Redkar
R/o Salvador-Do-Mundo, Bardez
Goa.

7) Mr Bhagwan Naik
R/o Salvador-Do-Mundo,
Bardez Goa.

... Respondents.

**Mr S.G. Desai, Senior Advocate with Mr Tejas Rane, Advocate
for the Petitioner.**

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

**Mr Gaurish Agni with Mr Kissan Kuvlekar, Advocates for Respondent
No.2.**

Mr Deepak Gaonkar, Advocate for Respondent Nos.4 and 5.

**Mr Vibhav Amonkar with Mr S. Shetye, Advocates for Respondent
No.7.**

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

RESERVED ON : 22nd August, 2023

**PRONOUNCED
ON : 29th August, 2023**

JUDGMENT: (Per Bharat P. Deshpande, J.)

1. Criminal Writ Petition Nos.64 of 2021 and 65 of 2021 are taken up
for final disposal at the admission stage itself with Criminal Writ Petition

No.20 of 2019 wherein Rule was issued, as these petitions are filed for quashing of two FIRs' i.e. a complaint and the counter-complaint filed against each other in connection with the alleged incident which took place on 27/09/2018 at Gaunswado, Salvador do Mundo, Bardez, Goa.

2. Criminal Writ Petition No.20 of 2019 is filed by the petitioner, who is a practising Advocate, thereby challenging the FIR vide Crime No.129 of 2018 registered at Porvorim Police Station against him for the offences punishable under Section 353, 504 and 323 of IPC on the complaint filed by Mr Avinash Palni, the Secretary of Village Panchayat Salvador do Mundo, alleging that during the inspection, the petitioner obstructed the Secretary and the Sarpanch of the Village Panchayat in conducting the inspection, abused them, pushed them and thereby committing the offence under Section 353, 323 and 504 of IPC.

3. Criminal Writ Petition No.64 of 2021 is filed by Mr Sandeep Salgaonkar, the Sarpanch of village Salvador do Mundo praying to quash the FIR No.130/2018 registered at Porvorim Police Station at the instance of respondent No.3 (Petitioner in Writ Petition No.20 of 2019) for the offences punishable under Section 143, 147, 504, 323, 506(II) r/w. 149 of IPC.

4. Criminal Writ Petition No. 65 of 2021 is filed by one Raees Ahmed Khan challenging the FIR No.130 of 2018 registered with Porvorim Police Station at the instance of respondent No.3 (Petitioner in Writ Petition

No.20 of 2019), for the offences punishable under Section 143, 147, 323, 504, 506(II) r/w 149 of IPC.

5. Thus, Writ Petition Nos.64 of 2021 and 65 of 2021 are challenging the same FIR No.130 of 2108 along with the charge sheet in Criminal Case No.327/S/2019 pending on the file of JMFC, Mapusa.

6. Though we have heard learned Counsel appearing for the respective parties, we first propose to consider submissions advanced in Criminal Writ Petition No.20 of 2019.

7. Heard Mr Deepak Gaonkar, learned Counsel for the petitioner, Mr S.G. Bhobe, learned Public Prosecutor for respondent Nos. 1 and 2 and Mr S.G. Desai, learned Senior Counsel with Mr Tejas Rane, learned Counsel for respondent No.3 in Writ Petition No.64 of 2021 and 65 of 2021 and Mr S.G. Desai, learned Senior Counsel with Mr Tejas Rane, learned Counsel for the petitioner, Mr S.G. Bhobe, learned Public Prosecutor for respondent No.1, Mr Gaurish Agni with Mr Kissan Kuvlekar, learned Counsel for respondent No.2, Mr Deepak Gaonkar, learned Counsel for respondent Nos.4 and 5 and Mr Vibhav Amonkar with Mr S. Shetye, Counsel for respondent No.7 in Criminal Writ Petition No.20 of 2019

8. Learned Senior Counsel Mr Desai vehemently submitted that the petitioner (in Criminal Writ Petition No.20 of 2019) is a practising Advocate at Mumbai and he was engaged by his client by name John Menezes with regard to complaints lodged about illegal construction in Survey No.340/1 and 342/11 of Salvador do Mundo which in fact a private

forest/orchard zone. In spite of forwarding necessary complaints to the Directorate of Panchayats, Under Secretary requesting them to conduct necessary inquiry, there was no response. He then submitted that the petitioner's client is settled in Mumbai, and a senior citizen was unable to pursue and therefore engaged the services of the petitioner to assist him in legal matters. There were newspaper reports in the year 2018 saying about illegal construction carried out on the said property, which is actually marked as a private forest. The Navhind Times, dated 27/05/2018, reported around 40 illegal structures including some bungalows constructed in the said property without any license. Similarly, a complaint was lodged with the local panchayat and during site inspection, it was found that these structures were constructed without giving any NOC given by the Panchayat.

9. Mr Desai would then submit that the client of the petitioner by name John Menezes lodged his complaint dated 05/06/2018 to the Governor of Goa and requested for initiation of enquiry. The second complaint was lodged by John Menezes dated 20/06/2018, it was forwarded to the Directorate of Panchayat from the office of the Governor with directions to conduct necessary inquiry. The Directorate of Panchayat then forwarded said complaint to the BDO, Mapusa with further directions to take site inspection and submit the report. The BDO, Mapusa forwarded this complaint to Village Panchayat of Salvador do Mundo directing them to hold a site inspection. Accordingly, the Village Panchayat forwarded notice to John Menezes dated 27/08/2018 calling upon him to remain

present at the site on 27/09/2018 at 11.00am for the purpose of inspection. John Menezes then approached the petitioner and requested him to accompany him for the purpose of site inspection on 27/09/2018 in his professional capacity as an Advocate. John Menezes also anticipated some law and order issue as according to him the said structures were occupied by migrants and others however possibility of such migrants creating problems at the time of site inspection. The petitioner agreed and accordingly came to Goa along with his client John Menezes.

10. Mr Desai then would submit that by way of abundant caution John Menezes vide his letter dated 18/09/2018 addressed to the Senior Inspector of the Porvorim Police Station requested him to provide police protection at the site till the inspection is over. The petitioner also approached the Dy. SP within whose jurisdiction Porvorim Police Station came and requested him for a police jeep with police personnel to be sent on 27/09/2018 at the site inspection apprehending the law and order situation. It was specifically informed that there is alleged involvement of a Ward member who is also involved in two criminal cases.

11. Mr Desai would then submit that in spite of the request of the petitioner and his client, no police protection was provided on 27/09/2018. The petitioner along with his client John Menezes reached the inspection site at 10:30 am and since the inspection was fixed at 11:00 am, the petitioner started clicking photographs with his mobile phone. The petitioner along with his client John Menezes then went to the office of Village Panchayat wherein they found the Sarpanch, other panch members

and the Secretary present. The Sarpanch- Sandeep Salgaonkar threatened the petitioner of filing false complaints and started calling the owners of the illegal structures to the site by making phone calls through his mobile. The Sarpanch questioned the petitioner about his authority to remain present along with John Menezes. The petitioner handed over two authority letters duly countersigned by John Menezes. The press reporter from the local media also arrived at the Panchayat office and thereafter all proceeded to the inspection site wherein 25 persons already gathered at the spot preferably the occupants of the illegal structures constructed on the hill slope.

12. Mr Desai then would submit that immediately the said persons along with Sarpanch members surrounded the petitioner and his client and started abusing, threatening and then the Sarpanch by name Sandeep Salgaonkar pushed the petitioner and threatened that he would break the petitioner's bones. All of them threatened the petitioner and his client to withdraw the complaint. Suddenly at the instructions of Sarpanch - Sandeep Salgaonkar, the petitioner was hit with fist blows and kicks and at the same time threatening to kill was also going on. The Sarpanch hit the petitioner on his back and threw him down on the slope and all others started kicking him on his stomach.

13. Mr Desai then would submit that he somehow got up and started running down the slope but the Sarpanch and all other persons followed him. One of such person who hit the petitioner is identified as Raees Ahmed Khan(Petitioner in Writ Petition No.65 of 2021)

14. Mr Desai would then submit that the press reporter was present and clicked photographs of the said assault and then a video recording was carried out. The petitioner then reached the Porvorim Police Station and lodged his handwritten complaint, at around 12.30 am on 27/09/2018. The PSI present at the Police Station processed it into an FIR and the petitioner was sent for medical examination in a police jeep. After examination, the petitioner returned to the Police Station in the police jeep at 16.05 hours. The petitioner was shown a typed FIR registered against the Sarpanch and his seven accomplices and was told to collect a copy of the FIR on the next day.

15. Mr Desai then would submit that in fact the complaint was lodged by the petitioner at 12.30 pm. However such a complaint was registered under FIR No.130 of 2018 whereas a false complaint was lodged by the Secretary of Village Panchayat Mr Avinash T. Palni - Respondent No.2 was registered vide Crime No.129 of 2018 under Section 353, 504, 323 of IPC. He would submit that the FIR Crime No.129 of 2018 is a false and fabricated FIR lodged against the petitioner only to pressurize him to withdraw his complaint and to falsely implead him in an offence which never took place.

16. Mr Desai would therefore submit that the impugned FIR bearing Crime No.129 of 2018 registered at Porvorim Police Station needs to be quashed and set aside as it clearly violates the rights of the petitioner being an Advocate to accompany his client at the time of site inspection. He would submit that it was highly improbable and impossible that an

Advocate that too practising at Mumbai and coming only to attend site inspection in Goa would dare and try to obstruct and assault the Sarpanch and the Secretary in the present of all panch members and a mob of around 40 persons allegedly the occupants of the illegal structures. He would submit that the entire story put forth in the complaint is fabricated and such a complaint was lodged only on the realization that the petitioner has approached Porvorim Police Station with a complaint against them and has been referred for medical examination. He submits that the local MLA and other politicians were also involved in such illegal constructions and or protecting the illegal occupants of the said structures and in fact visited the Police Station and questioned the Police Officer as to why the petitioner was referred for medical examination instead of arresting him in a false case. He then submitted that by preventing the petitioner as a practising Advocate from doing his duty and assisting his client, the right to profession has been impeached. In this respect, he referred to Section 13 of the Advocates Act. Finally, he claimed that the FIR and the statements of the witnesses recorded therein are necessary to be considered as an abuse of the process of law and need to be quashed and set aside.

17. Per contra, the learned Public Prosecutor, Mr. S.G. Bhobe, fairly submitted that from the contents of the complaint and the probabilities shown during the investigation, it is highly improbable to consider the case under Section 353, 323 and 504 of IPC against the petitioner. He fairly agreed that the complaint does not disclose the ingredients of the offences charged.

18. The learned Counsel appearing for respondents Nos.2,4,5 and 7 would submit that there is a complaint and counter-complaint with regard to the same incident, and therefore this Court should not consider FIR vide Crime No.129 of 2018 as false and fabricated or improbable for the simple reason that same incident took place wherein the petitioner along with his client was present and there are statements of the witnesses showing the petitioner obstructing the Sarpanch and Secretary from doing their job. Similarly, all the witnesses stated that the petitioner pushed the Sarpanch and Secretary.

19. The learned Counsel for respondent Nos.2, 4, 5 and 7 further submitted that the petitioner, after pushing the Sarpanch and the Secretary, started running away with the fear that the mob would attack him and in that process he fell down while moving down the hill and as such sustained injuries. The complaint filed by the petitioner is absolutely false, and he, being an Advocate, skilfully drafted such a complaint to protect himself as innocent. The learned Counsel then submits that in fact, the FIR lodged by the petitioner vide Criminal Case No.130 of 2018 needs to be quashed and set aside being the subsequent FIR of the said incident or that the matter to be tried by deciding both the complaints together. In this respect, the learned Counsel appearing for the respective parties drew our attention to various submissions, medical certificates, Panchanama, the photographs and replies filed on record.

20. Similar arguments were advanced by the learned Counsel for the respective parties in Criminal Writ Petition No.64 of 2021 and 65 of 2021.

21. Rival contentions fall for determination as under:

22. In WPCR No.20/2019, substantive amendments were carried out including the prayer clause. During such amendments, Respondent No.3/CBI has been added. The amended prayer shows that the Petitioner is seeking direction to CBI to restart or commence a fresh investigation in FIR No.130/2018, which he has lodged against the Petitioners in WPCR Nos.64/2021 and 65/2021.

23. We have made clear to the learned Senior Counsel Mr Desai at the arguments stage itself that no case is made out for the purpose of involving the CBI to investigate the complaint which resulted in filing FIR No.130/2018 at Porvorim Police Station, for the simple reason that the incident is not so grave or that the local police is unable to investigate it in a proper manner. First of all, it is clear from the record that the complaint of the Petitioner (WPCR No.20/2019) was in fact registered vide Crime No.130/2018 though subsequent to the complaint lodged by Respondent No.2 bearing Crime No.129/2018. There is hardly a gap of 30 minutes of recording both complaints. Even the investigation started and a charge sheet is also filed before the learned Magistrate. It is not at all the case of the present Petitioner that the investigation was not properly carried out, till the present petition was amended.

24. Thus, we are only inclined to look into the aspect of FIR lodged against the present Petitioner (WPCR No.20/2019) bearing Crime No.129/2018 at Porvorim Police Station and whether the same needs to be

quashed and set aside on the touchstone of the settled proposition laid down by the Apex Court in its decision in the case of *State of Haryana vs Bhajan Lal; (1992) 1 SCC 335* and in the case of *M/s Neharika Infrastructure Limited vs. State of Maharashtra; 2021 SCC OnLine SC 315*.

25. Similarly, we will also consider the contentions of Petitioners in WPCR Nos.64/2021 and 65/2021 on the above aspects and whether complaints/FIR bearing Crime No.130/2018 lodged against them by the present Petitioner (WPCR No.20/2019) needs to be quashed and set aside.

26. In the case of *M/s Neharika Infrastructure Limited* (supra) on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr. P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India, the final conclusions were as under:

“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 a cognizable offence;

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

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

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

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 rather 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 and one ought not to tread over the other sphere;

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. 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 more 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;

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

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr. P.C. and/or under

Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr. P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr. P.C., while dismissing/disposing of the quashing petition under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

27. In the case of *Mahmood Ali and Others vs. State of U.P. and Others*; 2023 SCC OnLine SC 950, the Supreme Court was dealing with quashing of FIR on the ground that the allegations in the said FIR are not only absurd but also highly improbable given the said incident. It was further claimed that such FIR was maliciously instituted at the behest of the Complainant only to wreak vengeance and to settle political scores. In this context, after considering the parameters laid down in the case of *Bhajan Lal* (supra), the Supreme Case has observed in para No.13 as under:-

“13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and

circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

28. In the light of above settled propositions, we would like to examine the complaint lodged against Petitioner (WPCR No.20/2019) in great detail as while arguing the matter, we found that such complaint appears to have been lodged on the knowledge that the Petitioner approached Porvorim Police Station and that he was referred for medical examination.

29. The complaint is dated 27.09.2018 lodged by Respondent No.2, who is the Secretary of Village Panchayat, against the present Petitioner. It refers to the aspect of fixing of site inspection. The complaint mentions that on 27.08.2018, Panchayat issued a site inspection notice to Mr John Menezes resident of Mumbai based on his complaint dated 11.06.2018. In this notice, said John Menezes was directed to appear at the site on 27.09.2018 at 11:00 a.m. onwards for the purpose of site inspection.

30. This itself shows that John Menezes who is the client of the Petitioner and resident of Mumbai lodged some complaint against illegal structures

being erected in Survey No.342/11. Allegations in the said complaint were made by Mr John Menezes that according to the newspaper reports, there are around 40 illegal structures erected in the said property.

31. The complaint lodged by Respondent No.2 further shows that on 27.09.2018 at around 11:45 a.m., he along with Sarpanch Sandeep Salgaonkar, Ward Members Bhagwag Naik, Viju Dalvi, Vijay Chodankar and peon Sonu Savaikar and the property owners namely Deepchand Redkar, Mahadev Majalkar, Yellappa Kurubar, Krishna Rathod, Amar Hadfadkar and other local residents gathered for the inspection. It also refers to one Mr Raees Khan (Petitioner in WPCR No.65/2021) being the authorised person of the property owner Amar Hadfadkar present at the site with some press personnel who were called by Mr John Menezes.

32. The complaint dated 27.09.2018 lodged by Respondent No.2 further shows that during the said inspection, they asked Mr John Menezes to show 40 illegal houses to him and the Panchayat members. Accordingly, Mr John Menezes could show only 8 houses to him and the Panchayat members, so also the press persons. The Panch members again asked John Menezes to show number of houses as alleged in the complaint, but he could identify only 8 houses. The complaint further shows that in respect of said 8 houses, Panchayat had already issued demolition orders and such notices were subjudice before the Director of panchayats.

33. The complaint filed by Respondent No.2 then refers to the Petitioner (WPCR No.20/2019) who was present along with John Menezes claiming

to be his lawyer. The Complainant and the Sarpanch time and again informed the Petitioner not to interfere with the official procedure and not to disturb the site inspection, however, the Petitioner was disturbing their official procedure of inspection. He was told repeatedly not to interfere as he had no authority to that effect. The Complainant then claimed that he called upon the Petitioner to show his authority letter from any property owner but he failed to show the same. On this, the Petitioner started raising his voice on the Complainant, Sarpanch and Panch members using slang language and not allowing them to do further inspection.

34. The complaint further shows that later on, the Panchayat members along with Complainant John Menezes proceeded further towards rocky hilly area in order to show the illegal houses but during this time, the Petitioner again started interfering, abusing the Sarpanch and local villagers. He was again asked to stop interfering and using slang language. At that time, the Petitioner pushed the Sarpanch and the Secretary and then started running down the hill wherein there is a mud road with water trenches and gravel. While running, the Petitioner slipped on the gravel and fell down. At that time also, he was seen shouting and as the local persons went towards him, he again got up and started running with the apprehension that he could be assaulted but again fell down. At that moment, the local people helped him to get up.

35. The complaint then shows that therefore the Complainant lodged his complaint against the Petitioner for obstructing him and the Panchayat members from carrying out site inspection work in Survey No.342/11,

abusing them in filthy language, pushing the Complainant and the Sarpanch with an intention to cause harm. This complaint was registered vide Crime No.129/2018 at 15:40 hours, for the offences punishable under Sections 353, 323 and 504 of IPC.

36. A little background needs to be looked into as in this case, it is very much necessary to consider the documents which the Petitioner has produced along with the present petition and not denied by the investigating agency. First of all, it needs to be noted that the Petitioner is a practicing Advocate and resident of Mumbai. His client Mr John Menezes is also resident of Mumbai but claimed to be the owner of property bearing Survey No.342/11 at Salvador-Do-Mundo. Said John Menezes lodged complaint to various authorities in Goa including the Governor and accordingly, directions were given to the Village Panchayat to conduct site inspection. In this respect, the notice of site inspection was issued by the Village Panchayat dated 27.08.2018, the reference of which is made in the complaint. Before coming to Goa, John Menezes addressed a letter to the Senior Inspector of Porvorim Police Station wherein he clearly referred that he will be accompanied by his Advocate to attend the site inspection fixed on 27.09.2018 and he suspects that the persons who have carried out illegal construction would create disturbance and even may attack him and his lawyer. He, therefore, requested Porvorim Police to give them protection at the time of site inspection.

37. A day before inspection, the Petitioner being an Advocate and representing his client John Menezes visited the office of SP (North) and

handed over one letter dated 26.09.2018 with a request to give Police protection to them during the site inspection fixed on the next day.

38. Learned Senior Counsel Mr Desai would therefore submit and rightly so that the Petitioner who is an Advocate coming down to Goa from Mumbai with his client was alone in the mob of the Sarpanch, members and local residents, would not dare to obstruct the inspection and dare to push the Sarpanch and the Secretary. According to him, such eventuality was highly improbable and that too from an Advocate. The complaint was lodged only with a view to counterblast and wreak vengeance against the Petitioner who came along with his client only to carry out inspection of illegal structures. There was no occasion for the Petitioner to take law in his own hands by obstructing the Sarpanch or the Secretary in performing their duty. He then submitted that except the word “obstructed”, there is no other material to show what obstruction was created by the Petitioner in performing their duty. Similarly, he pointed out that except the use of abuses or slang language, there are no specific words disclosed in the complaint. Such words were inserted subsequently while recording statements of the witnesses under Section 161 Cr.P.C.

39. We fully agree with the submissions of the learned Senior Counsel Mr Desai on both these counts. First of all, Petitioner being an Advocate was duly representing his client John Menezes, who was called to remain present by the Panchayat for the site inspection. Said John Menezes was certainly entitled to be accompanied by his Advocate to properly advice him and there was absolutely no occasion for Respondent No.2 or the Sarpanch

to question the authority of Petitioner to remain present at the site inspection.

40. Except the word “obstructed”, the complaint nowhere discloses the specific act/overt act on the part of Petitioner which constitutes such obstruction to a public servant while carrying out his duty. In fact inspection was scheduled due to the complaint by John and hence petitioner being an Advocate of John had no reason to obstruct such inspection. It shows otherwise when various complaints were lodged but no action was taken by Panchayat. It was only when directions were received from higher authorities, Panchayat issued notice of site inspection. Therefore, neither the complaint discloses ingredients of Section 353 of IPC nor it discloses the specific abuses to constitute the ingredients of Section 504 of IPC. As far as Section 323 of IPC is concerned, it is claimed that the Petitioner pushed the Sarpanch and the Secretary, which according to us is highly improbable and unacceptable for the simple reason that the Petitioner is not resident of Goa and he came from Mumbai only along with his client Mr John Menezes. The Petitioner along with John Menezes were only two persons as against the mob of entire Panchayat members, Secretary, the local property owners and Mr Raees Khan. It shows that there were more than 30 to 40 persons present at the site. In such circumstances, an Advocate who is only representing his client at the time of site inspection would not dare to push the Sarpanch or the Secretary. There is no reason disclosed in the complaint as to why the Petitioner acted in such manner.

Even there is no mention in the complaint that there was any arguments or hot discussion or even provocation.

41. We say so for the simple reason that the complaint itself gives specific explanation about the Petitioner falling on the ground on two occasions while running away. According to us, this explanation in the complaint itself appears to be an afterthought only to counter the complaint lodged by the Petitioner about the alleged assault on him by the Sarpanch, other Panch members and Mr Raees Khan, during the said inspection.

42. The photographs produced by the Petitioner and clicked by the press reporters clearly go to show that the Petitioner was manhandled at the site and the person who manhandled the Petitioner is clearly seen in the photographs. Similarly, these photographs, show the number of persons present at the site as against the Petitioner and his client.

43. The explanation about the Petitioner slipping over and falling down on two occasions was in fact inserted in the complaint only to create a story in defence of the Complainant, the Sarpanch and others so that it could be used in defence in a complaint lodged by the Petitioner against the said persons.

44. The statements of the witnesses recorded by Porvorim Police Station in connection with Crime No.129/2018, on perusal would go to show that the same are stereotyped qua the incident of pushing the Secretary and the Sarpanch.

45. However, it is quite interesting to note the reply affidavit filed by Respondent No.4 Sandeep Salgaonkar in WPCR No.20/2019 and more particularly para 26 which reads thus:-

“26. Since said Complainant Mr. John Menezes, failed to point out which are those illegal constructions constructed in Gangozwaddo, Salvador-Do-Mundo Village of which he had made Complaint, I and Secretary of Village Panchayat of Salvador-Do-Mundo, asked said Complainant as to why he had made complaint when he doesn't know which are illegal constructions in Gangozwaddo, Salvador-Do-Mundo Village and at which time Petitioner all of sudden came on my body and assaulted and pushed me on the ground as a result of which I fell on the ground and sustained injury.”

46. Here, Respondent No.4 claimed that Petitioner all of a sudden came to him, assaulted and pushed him, due to which he fell down on the ground and sustained injury. It needs to be observed that this affidavit of Respondent No.4 is affirmed on oath whereas the statement recorded under Section 161 of Cr.P.C. on 27.09.2018 by Porvorim Police Station which is at pages 191 and 192, nowhere refers to assault or that Respondent No.4 fell down and sustained injury. It only refers that the Petitioner pushed him and the Secretary. Thus, Respondent No.4 is suddenly trying to improvise by claiming that he was assaulted by the Petitioner and when pushed, he fell down and sustained injury, that too on affidavit before this Court. There is no allegation that his statement under Section 161 Cr.P.C. was not correctly recorded by Porvorim Police Station.

47. The second aspect which needs to be considered from the affidavit of Respondent No.4 is the contrary statement in para 25 in his affidavit which reads as under:-

“I say that on questioned to Mr. John Menezes (Complainant) to point out and/or to show which are those illegal constructions in Gangozwaddo, Salvador-Do-Mundo Village against which Complaint is/are made, said Complainant could not show or point out and rather failed to point out which are those illegal constructions constructed in Gangozwaddo, Salvador-Do-Mundo Village of which he had made Complaint.”

48. Here, Respondent No.4 claimed that when he questioned Mr John Menezes to point out or to show which are those illegal constructions against which complaint is lodged, said John Menezes failed to point out such illegal constructions. However, the statement of Respondent No.4 recorded by Porvorim Police Station under Section 161 Cr.P.C. shows that Mr John Menezes was asked to show 40 illegal houses to the Sarpanch and the Panch members but said John Menezes could show only 8 houses as illegal structures. Similar is the statement found in the complaint itself lodged by Respondent No.2 dated 27.09.2018 that only 8 illegal structures were shown by John Menezes though he claimed that there were 40 such illegal structures. It, therefore, shows that even Respondent No.4 by filing affidavit on oath before this Court is trying to improvise his case by claiming otherwise.

49. In WPCR No.64/2021 filed by Sandeep Salgaonkar challenging the FIR No.130/2018, he claimed in para 15 of the petition that he was assaulted, pushed due to which he fell down on the ground and sustained injury. However, the complaint lodged by Secretary of the Village Panchayat dated 27.09.2018 only mentions about pushing the Sarpanch and the Secretary by the present Petitioner in WPCR No.20/2019. There is no reference to any assault or the Sarpanch fallen on the ground and sustaining injury due to pushing. The statement of Sandeep Salgaonkar recorded on 27.09.2018 by Porvorim Police Station also nowhere referred that he was assaulted and thereafter due to push, he fell down and sustained injury. His statement only refers as under:-

“When I further asked him to stop interfering and using slang language, he pushed me and Secretary and thereafter seeing this villagers approached towards him so he started running down the hill which is a mud road with water trenches and gravel and while running, I saw him slipped down.”

50. At this stage, we would like to observe that the Petitioner in WPCR No.20/2019 approached this Court on the ground that the FIR and the proceedings lodged against him are manifestly frivolous, vexatious or with ulterior motives to wreak vengeance. It is our duty to look into the said FIR and other material with care and caution and more specifically while doing so, we cannot overlook many other attending circumstances emerging from the record of the case and while doing so, we may try to read in between the lines, as observed by the Apex Court in the case of ***Mahmood Ali*** (supra). It is also necessary to keep in mind that each and every case has to be

examined independently on its own merit and within the parameters as laid down by the Apex Court in various decisions.

51. Allegations made in the First Information Report No.129/2018 or the complaint, statements of the witnesses, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence under Section 353, 323 or 504 of IPC. Similarly, the said allegations along with other material do not disclose commission of the said offences. We also found that the allegations made in the said FIR and the complaint are so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion that there is sufficient ground for proceeding against the Petitioner.

52. Section 353 of IPC speaks about assault or criminal force to deter public servants from discharging of his duty. It provides about assault or use of criminal force to a public servant in execution of his duty as a public servant or any intention to prevent or deter such public servant from discharging his public duty. The allegations in the complaint only refers to some obstruction created by the Petitioner without elaborating the manner in which the Petitioner created such obstruction during inspection of illegal structures. Secondly, it is claimed that the Petitioner pushed the Sarpanch and the Secretary and used slang language. We have already observed that such eventuality is so absurd and improbable given the circumstance that the Petitioner is an Advocate and he along with his client were the only persons surrounded by a mob of the persons who constructed illegal structures in the said property. In such circumstance, it was highly

improbable on the part of Petitioner to do such overt act. We also observe that such allegations of alleged pushing and using slang language were made only because the Petitioner was manhandled, beaten who received injuries and therefore, the complaint itself gives explanation about the injuries received by the Petitioner due to alleged fall while running.

53. The offence of Section 504 is also not made out as the specific words of insult are not found in the complaint except the words as “slang language”. No doubt, such words are thereafter found recorded in the statements of the witnesses. However, it is clear that such words were inserted only to counter the complaint filed by the Petitioner so as to make a probable case.

54. Considering the overall material placed on record, we are of the considered opinion that the Petitioner’s contention squarely falls within clause No.(1), (2), (3) and (5) of para No.102 of *Bhajan Lal* (supra). Accordingly, we are inclined to allow WPCR No.20/2019 partly thereby quashing the FIR vide Crime No.129/2018 lodged against the Petitioner for the offence punishable under Sections 353, 504, 323 of IPC together with the charge-sheet.

55. Now we would like to take up the Criminal Writ Petition No. 64 of 2021 and 65 of 2021 filed by Mr Raees Khan against whom FIR number 130 of 2018 was lodged at Porvorim Police Station along with others for the offences punishable under Sections 143, 147, 323, 504, 506(ii) r/w 149 of IPC.

56. We have already discussed in detail the alleged incident and the circumstances in which the said allegations were made against each other.

57. It is an admitted fact that in spite of various complaints lodged by John Menezes regarding illegal constructions, no action was taken by the Village Panchayat. It was forced to carry out site inspections when the directions came from the higher authorities including the Directorate of Panchayat. The said John Menezes and his Advocate came from Bombay only to attend site inspection and that too on a letter received from the Village Panchayat. The said John Menezes and his Advocate informed the office of SP North on the previous day that there is likelihood of breach of peace or even an attack on them by the persons who carried out illegal constructions in the said land. With this background, the contentions of the petitioners in the above petitions need to be taken into consideration.

58. The Sarpanch admits that site inspection was fixed wherein he along with other panch members, Secretary and some persons being local were present at the spot. At one stage the Sarpanch claimed that when he asked John Menezes to show illegal structures he could identify only 8 structures though allegations were regarding 40 structures. This fact was found recorded in the complaint lodged by the Secretary and registered under Crime No.129 of 2018. However, in reply to the Writ Petition No.20 of 2019, the Sarpanch claimed that not a single illegal structure was shown by John Menezes in spite of repeated requests. We at this stage failed to understand as to why John Menezes is required to show illegal structures. The Panchayat is duty bound to conduct inspection of the site and to find

out whether structures existing therein are legally constructed. Such a procedure itself would show that the Sarpanch in fact was not inclined to carry out an inspection of the site in accordance with law and duty bound to perform as per the Panchayat Raj Act. Be that as it may, the complaint against Sarpanch and Raees Khan is a handwritten complaint lodged by the Advocate of John Menezes. In criminal Writ Petition No.20 of 2019 the petitioner (Advocate of John Menezes) clearly averred that immediately after the assault on him, he rushed to Porvorim Police Station and reached there at 12.30noon. He lodged his handwritten complaint and accordingly, he was referred for the medical examination. There is absolutely no denial of this statement and more specifically from the investigating agency. Thus, it shows that said Advocate went to Porvorim Police Station at around 12.30 noon and lodged his complaint which is in his own handwriting by giving all details and in fact the name of Sarpanch and Mr Raees Khan and others.

59. It is no doubt true that the said Advocate was referred for medical examination and the hurt certificate issued by District Hospital Mapusa shows that he was examined at 4.05 pm wherein he has given history of being assaulted by 8-10 persons with fist blows, kicks and received 4 injuries. It is surprising to note here that FIR No.130 of 2018 was registered only at 15.50 hours as per the general diary reference No.52 of 2018 though the said Advocate/ complainant therein visited the police station at 12.30noon. For writing a complaint in hand itself it is possible that the said Advocate/complainant could have consumed at the most half

an hour. The complaint filed by the Secretary of panchayat is a typed complaint and registered vide crime No.129 of 2018. Surprisingly, the timing of recording of such FIR is 15.40 hours vide general diary reference entry No.51 of 2018. It shows that such complaint was an oral complaint however perusal of this complaint would clearly go to show that it is a typed written complaint from the Secretary Avinash P. Palni with the inward number of the police Station. If an oral complaint would have been lodged, there was no question of giving inward number to a complaint reduced in writing. Be that as it may, it shows that even before the Advocate / complainant was examined by Doctor at District Hospital, the complaint against him was registered at 15.40 hours and immediately within 10 minutes the complaint filed by the Advocate against the Sarpanch and others was registered at 15.50 hours.

60. The investigating agency is absolutely silent on both these aspects. It clearly goes to show that the complaint filed by the secretary is a typewritten complaint and it was registered just 10 minutes before registering the complaint filed by the Advocate.

61. The question in the present petition is whether the complaint lodged by an Advocate against the Sarpanch and Mr Raees Khan is a counterblast only to take vengeance. While discussing in connection with Writ Petition No.20 of 2019, we have expressed our view that the complaint lodged by the Secretary against the said Advocate is in fact after thought complaint, counterblast and with a view to take a vengeance. As against it, the complaint lodged by the said Advocate against the Sarpanch and Mr Raees

Khan cannot be considered as a false case in order to take vengeance, for the simple reason that there was no previous enmity between these parties. The said Advocate along with Mr John Menezes came from Mumbai for the purpose of the inspection of the illegal structures. It shows that a Sarpanch and other members of the said Panchayat though present at the time of inspection, apparently failed to carry out the inspection and were asking John Menezes to show illegal structures. The panchnama proceedings which are produced on record are clearly shown to be a farce. Even though it is admitted by the secretary of the panchayat in his complaint that 8 illegal structures were shown, identified by John Menezes, no proper survey measurement during the said panchnama was carried out in connection with those 8 structures. Sarpanch - Sandeep Salgaonkar and Mr Raees Khan denied flatly on affidavit even 8 illegal structures identified by John Menezes, which is contrary to the complaint and their statements before the police.

62. As far as Mr Raees Khan is concerned in his petition he categorically claimed that he was not present at the site however he claimed that Mr John Menezes was asked by the Sarpanch to show illegal structures which he failed to do so, as his own knowledge. If he was not present at the site, there was no question of Mr Raees Khan to affirm this contents on oath as his own knowledge. Be that as it may, the complaint lodged by the Advocate is supported by a medical report and the statement of Mr John Menezes it is very clear that said Advocate was manhandled by the persons present at the spot. This is also corroborated by the photographs clicked by the press

reporter and attached with the petition filed by the said Advocate. That video recordings are also placed on record collected from the press reporter about the said incident.

63. Only because the complaint of the said Advocate was registered after a gap of 10 minutes from the recording of the complaint from the secretary of Panchayat, it cannot be contended that such a complaint was only a counterblast. For the sake of repetition it is necessary to note that the said Advocate/complainant remained present in the police station at 12.30 noon itself, that is 3 hours before the registration of the complaint against him. He was even referred for medical examination. In normal circumstances, the investigating agency waits for the medical certificate/hurt certificate to find out the proper sections under which the offence can be registered. However, in this case, one thing is clear the police did not wait for the medical report or the hurt certificate from Mapusa District Hospital as the said Advocate/ complainant was examined at 4:05 p.m. and only thereafter the certificate could have been issued. No explanation came forward from the investigating agency as to why the FIR was registered at 15:50 hours. The only conclusion in this regard is the pressure on the investigating machinery by some political person's influence which the learned Counsel Mr Desai has tried to impress on the basis of the allegations and even photographs. We refrain from considering such material at this stage. However, it appears that the Sarpanch being a political person influences the police officers in recording the complaint of the secretary just 10 minutes prior to registering a complaint filed by the Advocate. In fact, the

complaint was filed by the Advocate after he reached the police station at around 12:30 noon and ought to have been registered immediately on noticing that a cognizable offence had been committed.

64. The circumstances existing in the present proceedings would clearly go to show that the complainant/Advocate and his client Mr John Menezes are admittedly from Bombay and they came to Goa only for the purpose of inspection. There is nothing in the petitions filed by the Sarpanch and Mr Raees Khan to show that there was a previous enmity between the said Advocate, John Menezes and them so as to lodge such false complaint as alleged.

65. The complaint lodged by the Advocate shows that there were 8-10 persons, including the Sarpanch, Mr Raees Khan and others. The allegations in the complaint would clearly go to show that the said Advocate was manhandled, assaulted with fists, blows and kicks and even abused, threatened and then driven away from the said spot. The complainant being an Advocate, was duty bound to protect the interest of his client Mr John Menezes and he was representing his client during the site inspection. The allegations made in the complaint clearly go to show that the persons who constructed illegal structures called at the site were misled that John Menezes and his Advocate came there to demolish the said structures. This amounts to instigating the mob and shows the motive of the common object. The provisions of Sections 143, 147 and 149 of IPC are therefore squarely established. Section 504 intimidation and Section 506 threats are

also mentioned in the complaint with specific details. The assault under Section 323 prima facie established by the medical evidence.

66. If the complaint on its face value is taken as it is, would go to show that the ingredients of the offences alleged against Sarpanch and Mr Raees Khan are prima facie made out.

67. In the case of *Neeharika Infrastructure Pvt. Ltd.*(supra) conclusions have been drawn wherein the Supreme Court observed that the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It is also clear that while examining an FIR/complaint, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein. In this case, non-interference by this Court would not result in the miscarriage of justice as no exceptional case is made out for exercising extraordinary jurisdiction of this Court. The complaint lodged by the Advocate disclosed all the details, ingredients which are supported by medical evidence and even photographs, press reports, and videographs which clearly show that such FIR cannot be considered false and lodged only to counter the complaint filed by the Secretary of the Village Panchayat. In fact, we prima facie observe that the complaint lodged by the Advocate/complainant against Sarpanch and Raees Khan was prior in time though registered subsequently. While considering the earlier petition being Criminal Writ Petition No.20 of 2019, we have clearly observed that the complaint against the Advocate filed by the Secretary is, in fact, a counterblast and therefore, the present complaint lodged against the Sarpanch and others appears to be

the one lodged at the earlier stage, giving all details cannot be termed as a false complaint.

68. In the above circumstances, we refrain from interfering with such FIR, investigation and a chargesheet filed against the Sarpanch and Raees Khan in our extraordinary jurisdiction.

69. Having said so, Criminal Writ Petition No.20 of 2019 needs to be partly allowed, whereas Criminal Writ Petition No.64 and 65 of 2021 deserve to be dismissed.

ORDER

1. Criminal Writ Petition No.20 of 2019 stands partly allowed. The FIR/ Crime No.129 of 2018 registered at Porvorim Police Station for the offences punishable under Sections 353, 504, 323 of IPC lodged against the petitioner /Advocate is hereby quashed and set aside. Rule is made absolute in above terms.

2. Criminal Writ Petition Nos.64 and 65 of 2021 are dismissed. Interim stay on trial, if any stands vacated.

3. Rule is disposed of in both the Petitions in the above terms.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

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