

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO. 91 OF 2023**

Patrick Diniz alias M. P. Diniz, son of Domingos Diniz, advocate, aged 84 years, resident of H. No. 887, Cariamoddi, Curchorem, Goa. (represented herein by his duly constituted attorney, Richard Florence Diniz @ Richard Diniz @ R. Diniz, aged about 50 years, Indian, resident of House No. 887, Cariamoddi, Curchorem, Goa.

... Petitioner

Versus

1. Victor Diniz, son of Domingos Diniz, aged 72 years, advocate, resident of Cusmane, Quepem, Goa.
2. Sandeep Verlekar, s/o Sharanchandra Verlekar, aged about 64 years, resident of H. No. 108, Abade Faria Road, Margao, Salcete, Goa.
3. Arun Verlekar, s/o Sharanchandra Verlekar, aged about 58 years, resident of H. No. 108, Abade Faria Road, Margao, Salcete, Goa.

... Respondents

Mr. Parag S. Rao with Ms. Sowmya Drago and Mr. Ajay Menon, Advocates for the Petitioner.

Mr. James Lopes, Advocate for Respondent Nos. 2 and 3.

CORAM: BHARAT P. DESHPANDE, J.**DATED: 15th OCTOBER 2024**

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally at the admission stage itself with the consent of the learned Counsel for the parties.

2. Heard Mr. Rao for the Petitioner and Mr. Lopes for Respondent Nos. 2 and 3.

3. The legality or otherwise of the impugned order passed by the Revisional Court dated 28.04.2023 in Criminal Revision Application No. 80/2022 is questioned in the present proceedings.

4. Mr. Rao would submit that the Petitioner filed in all three complaints dated 10.08.2017, 02.10.2017 and 10.10.2017. He submits that initially, the office of the Complainant was shared by two other Advocates including the brother of the Complainant. Subsequently, in the complaint dated 10.08.2017, the Complainant informed the Police Authority that his name board outside the said office premises was found missing. Mr. Rao submits that on 02.10.2017, a second complaint was reported with regard to the change of lock of the said office apprehending that the furniture, fixtures inside the premises might be missing. A

request was also made to the Police to carry out the panchanama. Mr. Rao submits that accordingly, a panchanama was carried out on 09.10.2017 and that too in the presence of Mr. Sandeep Verlekar, Respondent No. 2, who opened the said lock and on inspection, it was found that the furniture, fixtures and law books were missing. Accordingly, the Complainant lodged third complaint on 10.10.2017 with the Police apprehending that the said furniture, fixtures and law books were removed by the Accused persons.

5. Since there was no response, a private complaint was filed by the Complainant before the concerned Magistrate, who ordered an inquiry under Section 202 of Cr.P.C. During the inquiry, the necessary documents including the statement of the Complainant and his witnesses were recorded and thereafter, the learned Magistrate found that there is *prima facie* material to issue process only against Accused No. 2/Respondent No. 2 and Accused No. 3/Respondent No. 3 thereby exonerating Accused No. 1/Respondent No. 1.

6. Mr. Rao submits that the order passed by the Magistrate issuing process was challenged by Respondent Nos. 2 and 3 before the learned Sessions Court in Criminal Revision Application No.

80/2022. He submits that while deciding the said Revision, the learned Revisional Court failed to consider the complaint dated 10.10.2017 and the material produced before the learned Magistrate to that effect.

7. Per contra, Mr. Lopes appearing for Respondent Nos. 2 and 3 would submit that the investigation or the panchanama was never conducted and that the procedure followed by the concerned Police Station is also doubtful. Mr. Lopes tried to justify the order passed by the Revisional Court on the ground that such proceedings were filed only to take revenge and were a waste of time.

8. Mr. Lopes was unable to justify the Revisional Court's order with regard to its observations and the absence of any findings in connection with the third complaint dated 10.10.2017, wherein specific allegations have been made by the Complainant against all the Respondents.

9. A perusal of the order passed by the Magistrate would go to show that such an order was passed after conducting an inquiry under Sections 200 and 202 of Cr.P.C. as well as after calling for the report of the Police Officer. It also shows that the statement of

the Complainant and his witnesses were recorded and only thereafter, the learned Magistrate found that there is *prima facie* material against the Accused persons and more specifically, against Accused Nos. 2 and 3 to show that they dishonestly removed the furniture and fixtures from the said office. The learned Magistrate accordingly issued process against Respondent Nos. 2 and 3 for the offence punishable under Sections 379 and 120A of IPC.

10. Respondent Nos. 2 and 3 challenged such order before the Revisional Court and by the impugned judgment dated 28.04.2023 set aside the order of the Trial Court and quashed the complaint filed against the said Respondents.

11. A perusal of the order passed by the Revisional Court would clearly reveal that discussions were made with regard to the complaint dated 10.08.2017 and 02.10.2017, however, there is absolutely no discussion about the third complaint dated 10.10.2017 which is considered to be the main complaint or the only complaint with regard to the missing or removing of the furniture or law books from the said office premises. Admittedly, complaints dated 10.08.2017 and 02.10.2017 are with regard to the missing of the name board and the change of the lock of the

said premises. During the filing of those complaints, no allegations were made with regard to the removal of the furniture and law books from the office.

12. Mr. Rao is justified in submitting that only after the panchanama was conducted on 09.10.2017 by the concerned Police Officer, it was noticed by the Complainant that his furniture, law books and other articles were missing from the said premises.

13. Mr. Rao is also justified in pointing out that the key of the said premises was found with Accused No. 2/Respondent No. 2, who appeared at the said premises on 09.10.2017 and opened the lock of the said office.

14. As far as the statement of Accused No. 2 as found recorded in the panchanama is concerned, it is for the Trial Court to consider whether it is hit by the provisions of Sections 25 and 26 of the Evidence Act since he is made an Accused in the said proceedings. However, the observation of the learned Magistrate is a fact that the premises were initially occupied by the Complainant as the name of the Complainant shown on the name board along with two other Advocates, clearly goes to show that

the Complainant was operating his office premises from the said place.

15. The inquiry conducted under Section 202 of Cr.P.C. before the Magistrate also *prima facie* reveals that the other two Advocates were allowed to operate from the said premises including the brother of the Complainant/Accused No. 1.

16. The question before the concerned Magistrate is only about the alleged theft of furniture, fixtures and law books from the office premises. This *prima facie* opinion of the learned Magistrate has been upset by the learned Revisional Court without even advertng to the complaint dated 10.10.2017, which is the main complaint regarding the missing of such lock. Thus, the impugned order certainly suffers from non-application of mind as well as perverse findings.

17. The recourse available to this Court is to quash and set aside the order passed by the Revisional Court and remand the matter for fresh consideration. Accordingly and without going into the merits of the matter, the impugned order passed by the Revisional Court on 28.04.2023 in Criminal Revision Application No. 80/2022 is hereby quashed and set aside. The said Revision is

restored to the file of the said Court with a direction to decide it in accordance with law. Needless to mention that the learned Revisional Court shall give a fresh opportunity to the parties to argue the said matter. It is expected that the learned Revisional Court shall decide such Revision as expeditiously as possible.

18. Rule is made absolute in the above terms. No costs.

BHARAT P. DESHPANDE, J.