



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.79 OF 2022

Gregory Primus D'Souza,

.....Petitioner

aged 50 years,

Proprietor of M/s. Genesis Enterprises
 Having office at Profit Center Building, First
 Floor Shop No.4, Opp. Kadamba Bus Depot,
 Margao, Salcete, Goa

Alternative address:

House No.1043, Utraband Vaddo, Loliem,
 Canacona – Goa Through his power of
 attorney holder Mr. Bhaganna R. Naikodi
 vide POA dated 04/07/2021 executed before
 the notary public with Apostille at United
 Kingdom.

Versus

1. State of Goa,
 Through Colva Police Station,
 Colva, Salcete, Goa.

2. Agostinho Fernandes, s/o. Avelino
 Fernandes, aged 79 years, r/o. H.No.I/D,
 Adsulim, Benaulim, Salcete- Goa.

3. Filomena Fernandes, w/o. Agostinho
 Fernandes aged 66 years, r/o. H. No.I/D,
 Adsulim, Bena Salcete- Goa.

4. Edwin Fernandes, S/o. Agpstinho Ferr
 aged 43 years, r/o. H. No.I/D, Adsulim,
 Benauli, Salcete – Goa.

5. Public Prosecutor
 High Court of Bombay at Goa,
 Porvorim, Goa.

.....Respondents

Mr. Melwin Viegas, Advocate for the Petitioner.

Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondent
 No.1/State.

Mr. C.A. Coutinho with Mr. Ivan Santimano, Advocates for the
 Respondent Nos. 2, 3 and 4.

CORAM: **BHARAT P. DESHPANDE, J**

DATED: **15th July,2024.**

ORAL JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith.
3. Heard the matter finally at the admission stage with the consent of the parties.
4. The Petitioner is the original Complainant who lodged the complaint against the Respondents/Accused for criminal trespass, giving threats and also unlawful assembly. On the basis of such complaint FIR was registered and the chargesheet was filed before the learned Magistrate for the offences punishable under Sections 143, 148, 506(ii) r/w 149 as well as 448 of the IPC.
5. The Respondents/Accused appeared and contested the matter. The learned Magistrate after considering the material on record passed on order dated 20/10/2018 observing that there is prima facie material against Accused Nos.1, 2 and 3 /Respondent Nos.2, 3 and 4 herein for framing charge under Section 448 and 506(ii) of IPC.

6. Respondent Nos.2, 3 and 4 challenged such order by filing a revision petition which was decided by the learned Additional Sessions Judge vide order dated 29/03/2019. By the said order the learned revisional Court, observed that there is no material found to frame charge against the said Respondents under Sections 448, 506(ii) r/w. 149 of IPC and accordingly discharged the said Respondents, which is challenged in the present proceedings.

7. It is necessary to note that the order of the Magistrate framing charge against the Accused person only under Section 448 r/w. 506(ii) clearly goes to show that the Magistrate discharged Respondent Nos.2, 3 and 4 from the remaining offences. Admittedly, such order was not challenged either by the State or by the Complainant before the higher authority and thus it becomes final. Accordingly, the present matter is restricted to offences under Section 448 r/w. 506(ii) of IPC.

8. Mr. Viegas appearing for the Petitioner submits that in the complaint as well as the statement of the Manager and the witnesses, there is clear statement that the Respondents/Accused persons committed criminal trespass during night time, took forcible possession of the hotel premises and when questioned by the Manager, threatened the Manager with dire consequences,

including the Complainant. He submits that such material is sufficient enough to frame charges against the Respondents however the learned Revisional Court failed to appreciate the statements of the witnesses of the Complainant to that effect.

9. Mr. Viegas further submits that the Complainant/Petitioner was in settled possession of the premises and he was threatened by illegal means and that too during night time. According to him, it amounts to criminal trespass along with giving threats of dire consequences.

10. Mr. Vaze, learned Additional Public Prosecutor appearing for the State submits that the statements are found in the complaint as well as stated by the Manager, the learned Revisional Court considered the agreement between the parties and accordingly discharged the Respondent.

11. Mr. C.A. Coutinho appearing for Respondent Nos.2, 3 and 4 would submit that the complaint itself shows the incident is with regard to two specific dates. The alleged incident of 17/04/2017 nowhere disclosed about the threats of dire consequences. He submits that the Complainant was not present at the site however the entire complaint is only on the basis of the contentions of Manager of the Complainant. He would further submit that the

charge sheet which was filed before the learned Magistrate only refers to the incident dated 17/04/2017 about criminal trespass and there is no reference to registration of any offence with regard to the incident dated 18/04/2017.

12. Besides, Mr. Coutinho would submit that the incident dated 18/04/2017 is only with regard to the Manager who tried to visit the said premises and at that time it is alleged that the bouncers engaged by the Respondents threatened him with dire consequences. He would further submit that in the FIR as well as in the chargesheet, such bouncers who gave alleged threats are not the accused persons.

13. Rival contentions fall for consideration.

14. The learned Magistrate considered that the Complainant and his Manager were in settled possession of the said premises and accordingly any trespass or dispossession of the Complainant would clearly amount to criminal trespass inviting criminal action. However, the revisional Court while discussing the above aspect and more particularly the agreement between the parties found that the Accused Nos.2, 3 and 4 are the owners of the said premises and the Complainant was only permitted to operate the restaurant. According to the revisional Court, there is no actual possession

handed over to the Complainant of the said premises, which remains with the owner.

15. Copy of the agreement is placed on record which would clearly go to show that the premises belong to the Respondents whereas the Petitioner was allowed to operate the restaurant for a period of 5 years. There are specific conditions imposed in the said agreement which would go to show that such agreement is not to be considered as lease, leave and license or otherwise between the parties.

16. The Complainant in his complaint dated 25/05/2017 has clearly referred to agreement dated 26/11/2014 executed between him and the Respondents wherein he was allowed to operate the restaurant and bar existing in the ground floor for a period of five years. It is also mentioned therein that the said building is identified as a hotel and the business of the said hotel managed by the Accused and the Complainant in a peaceful manner and that the possession of the restaurant and the bar is with the Complainant from the date of execution of agreement. After quoting the relevant conditions in the agreement itself, it has been stated that the Complainant has invested huge amounts in modification of the said restaurant and bar however it also stated that a legal notice was

issued by the Respondent dated 15/09/2016 thereby terminating the said agreement.

17. Thus the contents of the Complaint clearly goes to show that there is a civil dispute with regard to the operation of the said bar and restaurant and termination of such agreement.

18. The observations of the revisional Court that no ingredient of the offence of criminal trespass are found since the possession of the said premises are always with the owners/Respondents cannot be faulted with since the conditions of the agreement itself would prove it.

19. The contentions of Mr. Viegas that the Complainant was in settled possession of the said premises, needs to be discarded in view of the conditions mentioned in the agreement itself. However, it is made clear that these observations with regard to the contentions of possession is only for the purpose of deciding the present petition and the same shall not be taken into consideration for the purpose of any civil dispute pending between the parties. Above observations are only prima facie on the basis of contract between the parties as well as the one referred in the impugned order passed by the revisional Court.

20. The second aspect is with regard to allegations of giving threats of dire consequences.

21. The complaint dated 02/05/2017 refers to two different incidents. The first incident took place on 17/04/2017 which is found in paragraph 13 of the complaint.

22. The second incident is on 18/04/2017 which is found referred in paragraph Nos.14 and 15 of the complaint. As far as the incident dated 17/04/2017 is concerned, the allegations therein are only with regard to the threats to commit criminal acts. Secondly, the chargesheet which is filed before the learned Magistrate and more particularly paragraph No.13 of the final report show that cognizance was taken with regard to the incident dated 17/04/2017 only. There is no reference to any further incident on 18/04/2017 or any threats given to the Manager.

23. Since the learned revisional Court after considering the material on record observed that there is no case made out for framing charges under Section 448 and 506(ii) of IPC, such findings need no interference in the writ jurisdiction and more particularly under the extraordinary jurisdiction of this Court as the trial Court on appreciating the material on record comes to the conclusion that when there are two views possible on the

satisfaction that the evidence produced before him while giving rise to some suspicion but not grave suspicion, he is fully entitled to discharge the Accused person.

24. The matter in hand prima facie shows that it is a civil dispute between the parties and accordingly even a civil suit is filed and pending. The complaint was lodged on 02/05/2017 with regard to the incident dated 17/04/2017. Accordingly, the observations of the Apex Court in the case of **Vishnu Kumar and Another v/s State of Uttar Pradesh and Another** [2024 AIR (SC) 90] and more particularly paragraph No.20 stands attracted to this matter.

25. The impugned order passed by the learned revisional Court with delay order considering all the aspects. Admittedly, the bouncer who allegedly gave threats on 18/04/2017 to the Manager, are not the accused before the Court. Accordingly, no case is made out for interference with the revisional Court's order and that too under the extraordinary jurisdiction of this Court. Accordingly, the petition stands dismissed. Rule stands discharged.

BHARAT P. DESHPANDE, J.