



Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 93 OF 2022

ABHAY R. NAIK GANTHE ... PETITIONER

Versus

STATE OF GOA, THR. ITS CHIEF
SECRETARY & 2 OTHERS ... RESPONDENTS

Mr. Rohit Bras De Sa, Advocate for the Petitioner.

Mr. Nikhil Vaze, Additional Public Prosecutor for
Respondent Nos. 1 and 2.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 15th JULY 2024

ORAL ORDER:

1. Heard Mr. De Sa for the Petitioner and Mr. Vaze for the State.

2. None present on behalf of Respondent No. 3, though duly served. On 19.09.2022, Ms. M. Desai appeared for Respondent No. 3, however, till date, no Vakalatnama has been filed, even though she submitted that she intends to file the Vakalatnama.

3. This Petition is filed questioning the legality or otherwise of the order passed by the Revisional Court/Sessions Court in Criminal Revision Application No. 83/2019 dated 01.09.2021.

4. The Petitioner is the owner of the house, who filed a complaint with the Agassaim Police Station with regard to the discharge of waste water into his property by the owner of the adjoining property i.e. Respondent No. 3. A report was prepared by the Police Constable, which was presented before the concerned Magistrate under Section 133 of Cr.P.C. The Joint Mamlatdar took up the said case and called upon Respondent No. 3, who appeared and contested the matter. The Joint Mamlatdar after conducting the necessary inquiry, directed Respondent No. 3 to remove such nuisance, which was challenged before the Revisional Court vide Criminal Revision Application No. 83/2019.

5. Mr. De Sa appearing for the Petitioner would submit that the findings of the Revisional Court are perverse and illegal since it is an admitted fact that the report of the Head Constable and the panchanama carried out clearly go to show the discharge of waste water from the property of Respondent No. 3 into the property of the Petitioner, which was considered to be the breeding ground for mosquitoes. He submits that even though there are no other

houses in the said locality, it cannot be considered as a private nuisance.

6. The learned Revisional Court after considering the report of the Head Constable as well as the provisions of Section 133 of Cr.P.C, observed that the allegations made in the said complaint clearly show that it is a private dispute between the Petitioner and Respondent No. 3 and since there are no other houses nearby, it cannot be termed as public nuisance. The definition of public nuisance is provided in Section 268 of IPC, which reads thus:

“268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.”

7. The provisions under Section 133 of Cr.P.C. are with regard to the powers of the District Magistrate or Sub-Divisional Magistrate or the Executive Magistrate to pass conditional orders for the removal of such public nuisance. The above provisions, which come within Chapter X of Cr.P.C., clearly provide

discretionary power to the concerned Authority only for the purpose of removal of such nuisance temporarily so as to prevent from commission of any offence.

8. The allegations in the complaint as well as the panchanama carried out by the investigating agency show that waste water was found flowing from the temporary bathroom existing in the property of Respondent No. 3 into the property of the Petitioner. Admittedly, a Civil Suit is filed by the Petitioner and even an Application for temporary injunction was filed preventing such nuisance.

9. The report of the Police Officer as well as the spot inspection shows that apart from the house of Respondent No. 3 and the Petitioner, no other house exists in the vicinity.

10. Viewed with these facts, the Revisional Court observed that such nuisance of discharge of waste water into the property of the Petitioner, if any, cannot be considered as a public nuisance since the said water is only accumulating in the property of the Petitioner. The learned Revisional Court observed that it is only a private nuisance, for which, a Civil Suit is already pending between the parties.

11. The Revisional Court further observed that the allegations made in the said complaint clearly show that it does not come within the definition of public nuisance.

12. Mr. De Sa would try to submit that the observation with regard to the accumulation of water is considered as a breeding ground for mosquitoes and thus, it could be considered as a public nuisance. Such observations, though found mentioned in the report as well as by the Joint Mamlatdar, the same cannot be considered as public nuisance for the simple reason that there are no other houses at nearby places.

13. The matter is clearly a private dispute between the two neighbours and even a Civil Suit is pending for adjudication. Accordingly, the observations of the Revisional Court need not be interfered with in the extraordinary jurisdiction of this Court.

14. The Petition, therefore, stands dismissed. No costs.

BHARAT P. DESHPANDE, J.