

Hemant Karmali and Others Vs. State Through P.i. and Others

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Court : Mumbai Goa

Decided On : Oct-22-2012

Judge : S.J. Vazifdar & F.M. Reis

Appeal No. : Criminal Writ Petition Nos. 87 of 2012, 88 of 2012 & 89 of 2012

Appellant : Hemant Karmali and Others

Respondent : State Through P.i. and Others

Judgement :

F.M. Reis, J.

Heard Shri S.G. Dessai, learned Senior Counsel appearing for the petitioners, Shri A.N.S. Nadkarni, learned Advocate General appearing for respondent nos.1 and 3 and Shri D. Pangam, learned Counsel appearing for respondent no.2.

2. Rule. Heard forthwith with the consent of the learned Counsel appearing for the parties. The learned Counsel appearing for the respondents waive service.

3. The above petitions are taken up together for hearing as the Counsel appearing for the respective parties point out that the points involved in all the petitions are common and are in connection with the same complaint lodged by the respondent no.2.

4. Briefly, the facts of the case are that the respondent no.2 lodged a complaint before the respondent no.1 jointly against all the petitioners in the above petitions on 8/02/2006 stating inter alia that they are Mining Lessees of a mine known as Cuddegalivoril Soddo and that the petitioners had hatched a conspiracy and fraudulently obtained an order dated 21/11/2005 from the Joint Secretary of Mines, permitting mining operations in respect of the said mining concession. It is further the case of the petitioners that respondent no.2 filed an application bearing no.26/2006/D praying for a direction to the respondent no.1 to register the complaint and investigate the same. It is further their case that by order dated 4/10/2006 the learned Magistrate allowed the application and directed the respondent no.1 to register the FIR in pursuance of the said complaint which was registered bearing CR No.296/2006 under Sections 415, 420, 463, 467, 468, 471 r/w 34 and 120-B of the Indian Penal Code as against all the petitioners. It is further the contention of the petitioners that respondent no.1 filed a Final Report no.118/2009 before the learned Judicial Magistrate First Class at Margao seeking an order to grant A Summary on the ground that there was no sufficient evidence produced against the petitioners. The objections were filed by the respondent no.2 to the said application and the respondent no.2 sought further investigation in respect of the said FIR. The learned Magistrate by order dated 10/11/2010 granted A Summary in respect of Final Report no.118/2009 and rejected the objections of the respondent no.2. The respondent no.2 challenged the said order before the learned Additional Sessions Judge by way of Criminal Revision Application No.20/2011 which came to be allowed by order dated 23/07/2012 whereby the learned Sessions Judge directed the respondent no.3 to make further investigations in the matter. Being aggrieved by the said order the petitioners have preferred the above Writ Petition.

5. Shri S.G. Dessai, learned Senior Counsel appearing for the petitioners has assailed the impugned order essentially on the ground that the learned Sessions Judge had no jurisdiction to direct further investigation by another investigating agency. The learned Senior Counsel further pointed out that this powers are only available to the High Court and the learned Sessions Judge has no powers on that count. The learned Senior Counsel further pointed out that merely because the respondent no.2 finds that further investigations are required to be carried out

does not by itself be a ground for the learned Sessions Judge to direct further investigation. The learned Senior Counsel further pointed out that the whole exercise on the part of respondent no.2 is a vexatious exercise and only to harass the petitioners. The learned Senior Counsel further pointed out that there is no substance in the complaint lodged by respondent no.2 and, as such, the learned Magistrate was justified to direct A Summary with regard to the Final Report no.118/2009. The learned Senior Counsel has taken us through the impugned order and pointed out that the learned Sessions Judge has not at all considered as to whether further investigations are required. The learned Senior Counsel further pointed out that in any event the learned Judge was not justified to direct the respondent no.3 to proceed with further investigations as no powers on that count are vested on such Court. The learned Senior Counsel has further pointed out that the impugned order cannot be sustained and deserves to be quashed and set aside.

6. On the other hand, Shri D. Pangam, learned Counsel appearing for respondent no.2 has supported the impugned order. The learned Counsel pointed out that the respondent no.2 has brought sufficient material in support of the complaint lodged by him. The learned Counsel further pointed out that the investigations have not been carried out properly by the respondents and, as such, the learned Judge was justified to direct further investigation. The learned Counsel has taken us through the impugned order and pointed out that no interference is called for in the impugned order.

7. Shri A.N.S. Nadkarni, learned Advocate General appearing for respondents no.1 and 3 has pointed out that in any event the learned Sessions Judge had no powers to direct the respondent no.3 to carry out further investigations and if at all such further investigations was required the same ought to have been directed to be carried out only by respondent no.1.

8. We have considered the submissions of the learned Counsel and also gone through the records. The contentions of Shri S.G. Dessai, learned Senior Counsel appearing for the petitioners that the learned Judge had no powers to direct respondent no.3 to carry out any further investigations is justified. Such powers

are not available to the learned Judge and as such to that extent the impugned order cannot be sustained.

9. With regard to the contention of Shri S.G. Dessai, learned Senior Counsel to the effect that the learned Judge has not considered the material on record to ascertain as to whether any further investigation is required in the matter, we find that the learned Judge whilst passing the impugned order dated 23/07/2012 has only relied upon the contention of the respondent no.2 that the investigation has not been done properly by the police and consequently directed further investigation. Whenever the learned Judge finds that any further investigation is required the learned Judge has to first satisfy himself that proper investigation has not been done or is not being done by the Officer in charge of the police station concerned. In the present case, we find that the learned Judge has not followed the well settled principles in order to satisfy himself that proper investigation has not been carried out. Without going into the rival contentions on merits of the Criminal Revision Application filed by the respondent no.2 before the learned Sessions Judge, we find it appropriate that the learned Sessions Judge be directed to decide the revision application afresh after hearing the parties in accordance with the law. All contentions of the rival parties on merits of the revision application are left open.

10. In view of the above, we pass the following order:

ORDER

(i) The impugned order dated 23/07/2012 passed by the learned Additional Sessions Judge, South Goa, Margao in Criminal Revision Application No.20/2012 is quashed and set aside.

(ii) The Criminal Revision Application No.20/2012 is restored to the file of the learned Sessions Judge.

(iii) The learned Sessions Judge is directed to decide the said Revision Application afresh in the light of the observations made herein above in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly.

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