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Court : Mumbai Goa

Decided On : Oct-29-2015

Judge : F.M. Reis & K.L. Wadane

Appeal No. : Criminal Writ Petition No. 103 of 2014

Appellant : Smita Khaunte

Respondent : Police Inspector, Panaji Town Police Station and Another

Judgement :

K.L. Wadane, J.

1. The present Writ Petition is filed by the petitioner seeking to quash and set aside the first information report dated 7.8.2014 lodged by the complainant Mahesh Kaisare.

2. Brief facts of the case may be stated as follows:-

The complainant Mahesh Kaisare lodged complaint to the Police Station, Panaji alleging that on 7.8.2014, from 8.30 onwards there was religious function in his house. His neighbour Mrs. Smita Khaunte i.e. the present petitioner had been to his flat and abused him as well as abused the priest who was performing religious function. After completion of the religious function when the complainant opened the main door at about 3.30p.m opposite the petitioner's flat, the petitioner came to attack his grand daughter Ms. Prakhya aged 2 years who was in his wife lap. His

wife tried to prevent her attack thereafter, the petitioner torn her clothes and injured herself with her nails and started shouting. After receipt of the complaint, the police officer, incharge of the police station registered the offence at 19.30 hours under FIR no. 248/2014 for the offence punishable under Sections 452, 504 of IPC and Section 8(2) of the Goa Children's Act.

3. The Writ Petition was filed challenging the FIR when the investigation of the above crime was pending and was in progress. After completion of the investigation the investigating officer filed a chargesheet against the petitioner, therefore, by way of amendment the petitioner seeks to quash and set aside the criminal proceedings/ chargesheet.

4. It is well settled law that the power of quashing a criminal proceeding/FIR should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It is equally settled that when the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. In the case of **State of Haryana and others V/s Bhajan Lal and others**, reported in **1992 Supp (1) Supreme Court Cases 335**, wherein the Hon'ble Apex Court has given categories of the cases in which extraordinary power under Article 226 or the inherent powers under Section 482 of Criminal Procedure Code can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an

order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.?

5. In view of the settled position of law, now it is necessary to go through the allegations of the petitioner against the complainant and allegations of the complainant against the present petitioner.

6. We have heard arguments of Mr. S. Desai, learned counsel appearing for the petitioner, Mr. D. Lawande, learned Additional Public Prosecutor for the respondent no.1 and Mr. S. Shet, learned Counsel appearing for the respondent no.2.

7. We have perused the FIR as well as the papers of the investigation particularly the statements of witnesses namely Uma Kaisare, wife of the complainant, Vasudev Bhat a preist, Gautam Kaisare, son of the complainant, Mrs. Priyan Kaisare, daughter-in-law of the complainant and the statement of the neighbour namely Smt. Vasudha Golatkar.

8. From the contents of the complaint and the statements of Uma Kaisare, Vasudev Bhat, it is crystal clear that the petitioner entered into the flat of the complainant, she abused the complainant as well as the priest and she tried to attack on the minor child i.e grand daughter of the complainant. So prima facie, it is seen from the record that there are reasons to believe that the petitioner has committed offence of criminal trespass under Sections 452, 504 of IPC. The role and the acts of the petitioner at the relevant time of the incident is very much clear. Further from the statements of neighbours namely Mrs.Mohini Pai, Mrs. Archana Tanawade, Mrs. Anita Pai Kakode, it appears that nature of the petitioner is quarrelsome. She always create nuisance in the apartment. On careful perusal of the statements and the complaint it appears that the petitioner reside exactly opposite to the flat of the complainant. The petitioner always picks up quarrel on minor causes.

9. It is material to note here that the present petitioner also lodged complaint on the same day alleging that the complainant, his wife Uma, son Gautam have assaulted the petitioner with broom after tying her hands and legs, such incident took place on the staircase between the flat of the complainant and the petitioner, therefore, the petitioner lodged a complaint against the complainant and his family members on the basis of the complaint FIR No.249/2014 on the same day. It is material to note that FIR lodged by the Kaisare is first in time and it is lodged on 7.6.2014 at about 19.30 hours. The petitioner lodged the complaint at about 21.40 hours.

10. On scrutiny of the contents of the FIR under challenge, it appears that complainant only alleged that the petitioner came to attack his grand daughter Ms. Prakhya aged 2 years who was in his wife's lap. His wife tried to prevent such attack. Thus, from the contents of the FIR as well as from the statements of the

witnesses no where it is clear that the present petitioner had attack or abused the child in view of the provisions of Section 8 of the Goa Children's Act, 2003. So on the face of the record, there is nothing to show that the petitioner committed offence punishable under Section 8 of the Goa Children's Act, 2003. There is no remote reference in the FIR or the statements of the witnesses to prima facie attract ingredients of offence of child abuse as contemplated under Sub-Section(2) of Section 8 of the Goa Children's Act, 2003. Provisions of Section 8(2) reads as follows:-

8(2) Whosoever commits any [child abuse or sexual assault] as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of Rs. 1,00,000/-. Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a term that shall not be less than 47[ten years] but which may extend to 48[life imprisonment]49 and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2,00,000/- 50[Statement of the child victim shall be treated on par with the statement of a child rape victim] under Section 375 of the IPC, as laid down by the Supreme Court of India.?

In view of the material on record and provisions of Section 8(2) of the Goa Children's Act, 2003, we find that there is nothing on record to constitute the offence against the petitioner that too even prima facie in reference to offence under Section 8(2) of the Goa Children's Act.

11. Looking to the contents of both the FIRs, it appears that presence of the complainant and the witnesses and the petitioner at the relevant time of the incident appears to be not in dispute. But only there is some variance between the place of the incident, the petitioner says that it occurred at the staircase where as the complainant states that the incident occurred in his flat.

12. In view of the above observations, we are of the opinion that there are reasons to believe that the petitioner has committed offence punishable under Sections 452, 504 IPC.

13. Looking to the observations made above, we are prima facie of the opinion that there is sufficient material prima facie to proceed with the matter for the offence punishable under Sections 452, 504 of IPC. However, there is absolutely no allegations/material on the record to constitute the offence punishable under Section 8(2) of the Goa Children's Act. Therefore, FIR/proceedings has to be quashed and set aside to the extent of the offence punishable under Section 8(2) of the Goa Children's Act, 2003. Therefore, we partly allow the Writ Petition and quash and set aside the FIR No. 248/2014 and Chargesheet No. 193/2015 pending before Children's Court for the State of Goa at Panaji only to the extent of the charge punishable under Section 8(2) of the Goa Children's Act. Accordingly, Rule is made partly absolute. All the above observations are prima facie and the learned Judge shall not be influenced by any of the observations made herein above while deciding the matter on merits.

14. Petition stands disposed of in the aforesaid terms with no order as to costs.

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