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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.64 OF 2023

1. Mr. Navendu Sudhir Gupta

Age: 51 years, Occupation: Business,
Residing at 606, Morning Glory,
Building No.1, Hubtown Gardenia,
Near GCC Club, Mira Road East,
Maharashtra-401107.

... Petitioner

Versus

1. Mrs. Honey Navendu Gupta,

Age: 39 years, Occupation:-,
Residing at C/O Navendu Gupta,
A2, Flat No. F2, Pinto Verdant,
Duler, Mapusa, North Goa,
Goa-403507.

2. The State of Goa

At the instance of Porvorim Police Station,
Porvorim-Goa, 403521.

... Respondents
(Respondent No. 1
Original Complainant)

Mr. Shailesh Kantharia with Ms. Neha Kholkar and Mr. V. Salkar,
Advocates for the Applicant.

Mr. Nikhil Vaze, Additional Public Prosecutor, Advocate for
Respondent No.1.

Mr. Vithal Naik, Advocate under Legal Aid Scheme for
Respondent No. 3.

CORAM : **M.S. KARNIK &
VALMIKI MENEZES, JJ.**

RESERVED ON : **25th JUNE, 2024**

PRONOUNCED ON : **8th JULY, 2024.**

JUDGMENT (Per Valmiki Meneses, J.):

1. This petition invokes our inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 seeking to quash a First Information Report bearing No.3/2023 dated 11.01.2023 registered against the Petitioner as Accused No.1 and against one Bashir Ahmad as Accused No.2, at the Porvorim Police Station, for offences alleged to have been committed by the Accused under Section 354-D read with Section 34 IPC; subsequent to filing the Charge-sheet/Final Report bearing No.64/2023 on 06.11.2023, before the Judicial Magistrate First Class at Mapusa, under Sections 354-D, 120-B r/w Section 34 IPC, the same was also challenged in this petition.

2. We have heard learned Advocate Shri Shailesh Kantharia for the Petitioner, Shri Nikhil Vaze, Additional Public Prosecutor for the Respondent No.2 and Shri Vithal Naik under the Legal Aid Scheme for the Original Complainant, Respondent No.1. In our order of 18.10.2023, it was noted that Respondent No.1 Complainant was duly served and was present before the Court on 21.08.2023 when she sought two weeks' time to engage an Advocate but was neither present on 18.10.2023 in person or through her Advocate when the

matter was called out. The order further notes that on 25.09.2023, the parties were put to notice that this petition would be disposed of finally at the admission stage on 18.10.2023 and accordingly, since the Respondent No.1 had not put in any appearance, the Goa State Legal Services Authority was requested to appoint Legal Counsel for the Complainant/Respondent No.1. Learned Shri Vithal Naik, Advocate was then appointed under the Legal Aid Scheme to defend the interests of the Complainant.

3. It is the Petitioner's contention that on a plain reading of the complaint dated 10/01/2023 which was recorded as the F.I.R., the allegations do not disclose the commission of any offence of stalking against the Petitioner, punishable under Section 354-D of the IPC. It is further the submission of the learned Counsel for the Petitioner that the ingredients of Section 354-D of the IPC in the form of allegations specific to the Petitioner are not disclosed in the complaint and the complaint is false and lodged only to vent the complainant's anger against the Petitioner due to their matrimonial discontent. Admittedly the complainant is the wife of the Petitioner and the two had been estranged since 2016.

4. Per contra, learned Shri. Nikhil Vaze, Additional Public Prosecutor, has taken us through the record of the Charge-sheet to contend that the allegations contained in the complaint, read together with the statements of various witnesses, recorded by the investigating agency would clearly bear out a case for trial, and this

would not be a fit case to quash the F.I.R. He has taken us through the complaint dated 11/01/2023, the statements of the complainant recorded by the Magistrate under Section 164(5-A) of the Cr. P.C., the statement of Mrs. Sumedha Naik, owner of a Kiosk, where Accused No. 2 would visit and make certain phone calls to the Accused No. 1 and the statement of one Nilesh Shankar Aroskar who put the Petitioner in contact with the Accused No. 2.

Broadly, it is the case of the prosecution that the Petitioner/Accused No. 1 contacted the Accused No. 2 Bashir and hired his services to keep a watch on his wife, the complainant at her residence at Salvador-do-Mundo. That on instructions of the Petitioner, the Accused No. 2 Bashir kept a watch on the movements of the complainant on 11/01/2023, by using a grey colour Dio scooter which belonged to one Shankar Gopal Gawade whose statement was recorded on 21/01/2023. That the complaint and the statement of the victim under Section 164 Cr. P.C, clearly sets out that the Accused No. 2 Bashir had been following her since a month prior to filing the complaint on a grey colour Dio scooter, and on being questioned by the police at the behest of the victim, the Accused No. 2 had stated the he was told by the Petitioner to keep a watch on the victim. It was submitted that the ingredients of an offence under Section 354-D of IPC had been clearly made out on a plain reading of the complaint and by virtue of the fact that the act of stalking was undertaken by accused No. 2 on instructions and at the behest of the Petitioner, an offence

under Section 120-B read with Section 34 IPC was clearly made out; accordingly, the case ought to be tried and the Petition be dismissed.

Shri. Vithal Naik, learned Advocated appointed under Legal Aid for the complainant/victim has reiterated the contentions raised by the learned Additional Public Prosecutor and supports a case for dismissal of the Petition.

5. The moot question before us is whether on a reading of the complaint/F.I.R. dated 11/01/2023 and supporting material collected during the investigation, an offence under Section 354-D read with Section 120-B and Section 34 IPC has been disclosed. At this stage, it would be apposite to quote the provisions of Section 354-D IPC:

354D. Stalking.--(1) Any man who--

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that--

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

6. For an offence of stalking to be brought home under clause (i) of sub Section 1 of Section 354-D of IPC, it is required that the accused must firstly follow a woman **and** contact or attempt to contact her. The purpose and intent for following the woman and establishing contact or attempting to contact her must be for the accused to foster a personal interaction with the victim and such attempt to contact the victim to foster personal interaction must be repeated. The above acts necessarily must persist despite the woman/victim clearly indicating her disinterest in the advances of the accused.

Thus, the offence would not be complete by a mere act of following only as it must be coupled with the attempt by the accused to repeatedly contact such woman with the intent or aim to foster personal interaction; further, even if the accused was to follow the victim and attempt to repeatedly have personal interaction with her, the offence would be brought home only if there is material to demonstrate that the victim clearly indicated to the accused her disinterest in his advances, aim at fostering personal interaction.

7. It is not the case of the prosecution that the accused committed any acts of monitoring the use by the victim of the internet, e-mail or

any other form of electronic communication, ruling out the application of clause (ii) of Sub Section 1 of Section 354-D of IPC. This case is restricted to whether the ingredients of clause (i) of Sub Section 1 of Section 354-D of IPC have been made out.

8. A reading of the complaint and the statement of the victim recorded under Section 164 Cr.P.C. brings forth the following allegations:

- (a) That the Accused No. 2 Bashir had been following the complainant since a month prior to filing the F.I.R.
- (b) That the Accused No. 2 Bashir was keeping a watch on the complainant and following her on instructions of the Petitioner, her husband from whom she was estranged since 2016.
- (c) That on account of the fact the victim's husband (Petitioner) was keeping a watch on the complainant through Accused No. 2 Bashir; that in turn the Petitioner was being informed by Bashir of the complainant's movements, as a consequence the complainant was suffering from fear that the Petitioner might take away her minor daughter or cause harm to her life.

9. Neither the complaint nor the statement of the complainant recorded under Section 164 Cr.P.C. disclosed that the Accused No. 2 Bashir had at any point in time attempted to establish contact with

her, much less that he attempted to contact her to foster personal interaction, or that such an act was repeated. Neither the complaint, nor her statement discloses that there was any opportunity for her to indicate disinterest to the Accused No. 2 Bashir, to complete the offence under Section 354-D of IPC. Thus, on a reading of the complaint and the statement of the victim, no ingredients of the offence of stalking are made out against the Accused No. 2 Bashir. This being the case, we fail to see how, merely because Accused No. 2 Bashir for allegedly following the victim at the behest of her husband, the Petitioner/Accused No. 1, that the Petitioner can be roped in for the offences of stalking, when none of the ingredients of the offence have been alleged against the Petitioner. If the offence of stalking itself has not been made out against the Accused No. 2, we failed to see how the Petitioner could be charged of the same act by applying the provisions of Section 34 or 120-B of IPC as neither common intent attributed to the two accused in the present case, nor can there ever be a case made out of criminal conspiracy to commit the offence of stalking as alleged against the accused.

10. Nevertheless, we have also examined the statements of some of the witnesses namely Sumedha Naik, Shankar Gawade, Nilesh Aroskar and Jabiulla @ Jabbi, which the learned Additional Public Prosecutor referred to attempt at bolstering the prosecution's case for trial.

The statement of Sumedha disclose that the Accused No.2 Bashir, during the relevant period use to visit her Kiosk, riding a grey colour Dio scooter bearing registration No. GA-07-J-9406. He would sit at her gada and eat there while calling someone on the phone whom he referred to as “Gupta Sir”, giving the caller updates on the complainant, whom she knew well. She further stated that when the police came to the spot after the complaint was made, Accused No. 2 Bashir disclosed that the Petitioner had requested him to watch the complainant.

11. The statement of Shankar discloses that the grey colour Honda Dio with the afore stated registration number which was in possession of accused Bashir when it was attached, belonged to him. He also stated that Bashir was his wife’s younger brother.

The statement of Nilesh discloses that the complainant’s husband, the Petitioner used to hire his Taxi when he visited Goa from Bombay and he knew the Petitioner’s family, the complainant and their children and where they resided. He has also stated that the Petitioner contacted him over the phone in November, 2022 with a request that he requires a person to keep a watch over his wife (complainant), and accordingly the witness Nilesh spoke with Jabbi to engage such a person. Jabbi allocated this work to the accused Bashir with whom Nilesh shared the phone number of the Petitioner.

The statement of Jabbi supports the version given by Nilesh in his statement.

Ongoing through the contents of these four statements, we are afraid that there is no material found therein that could factually fit the ingredients of the offence of stalking as defined under Section 354-D of IPC. In our opinion, even if all these witnesses depose to the contents of their police statements before the Magistrate, no offence of stalking would be made out.

12. We record our appreciation for the able assistance rendered by Shri. Vithal Naik, learned Advocate appointed for the Respondent No. 2 under the Legal Aid Scheme. Learned Advocate Shri. Vithal Naik has very ably defended the interest of the complainant, strenuously opposing the various contentions raised by the Petitioner.

13. For the reasons stated above, we hold that the ingredients of the offences under Sections 354-D, 34 read with 120-B of IPC are not disclosed in the F.I.R. / complaint or any of the material filed with the Final Report.

14. Consequently, we allow this Petition in terms of prayer clause (b) thereof; F.I.R. registered against the Petitioner and Accused No. 2 Bashir Ahmad in Cr. No. 03/2023 at Porvorim Police Station and connected Charge-sheet bearing No. 64/2023 pending before the Judicial Magistrate First Class, Mapusa is hereby quashed.

VALMIKI MENEZES, J.

M.S. KARNIK, J.