



shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 44 OF 2024**

1. SHAIKH AHMED MUZAWAR
S/o Idris Muzawar, Age 58 years,
Indian National, R/o H. No. 203,
Betul, Pirwad, Quepem-Goa.PETITIONER

Versus

1. STATE OF GOA
Through the Chief Secretary,
Having Office at Secretariat,
Porvorim-Goa.
2. THE DEPUTY COLLECTOR &
SDO QUEPEM-GOA
Office of the Deputy Collector &
SDO- Quepem-Goa.

3. THE POLICE INSPECTOR
Cuncolim Police Station,
Cuncolim, Salcete –Goa.

4. SHAIKH YUSUF ADAM
MUZAWAR, Major of age,
R/o Defodills Housing
Co-op Society, 1st Floor,
Flat No. 1, Indona, Davorlim,
Margao –Goa.

5. SHAIKH MOHAMMED HANIF
MEHMOOD MUZAWAR
Major of age, R/o Dabolim,
Volebhat Chikalim, Near
Masjid Noor, Vasco Da Gama-Goa.

6. SHAIKH KAIYUM MEHMOOD
MUZWAR Aged 48 yrs, Occupation.
Business R/o. Rebodda, Benaulim,
Opp. Rebodda Afonso Hospital
Near Star Garage Benaulim, Salcete, Goa.

7. SHAIKH ABDUL MUTALIB
MOHAMMED MUZAWAR
R/o. Shankar Wadi, Taligao
ESR Galaxy A 1, Flat No. T-1,
3rd Floor Talegao, Panaji Goa.

8. SHAIKH ABDUL GAFFAR
ABUBAKAR MUZAWAR
R/o. H. No. Church Wado,
Velsao Pale, Cansaulim Goa.

9. SHAIKH ABOO ISSAK
IBRAHIM MUZAWAR
R/o. Church Wado, Velsao Pale
Cansaulim- Goa

10. SHAIKH SULEMAN
MUSSA MUZAWAR
R/o. Coelho Apartment,
Flat No.9, 2nd Floor,
St Sebastian Church, T.B. Cunha
High School, Aquem Baixo, Margao Goa

11. SHAIKH ABDUL MUNAF ALIAS BABAR
ABDUL MUTALIB MUZAWAR
r/o. Betul Betul, Pirwad
Quepem, Goa

12. SHAIKH MOHAMMED
ALI ADAM MUZAWAR (*Deleted as per*

R/o. Betul, Pirwada,
Quepem Goa.

*order dated
08/04/2024)*

13. ABDUL RAUF ISSAK KHAN
R/o. Betul, Pirwad,
Quepem – Goa

*....(Deleted as per
order dated
08/04/2024)*

14. SHAIKH MOINDDIN ADAM
R/o. Betul, Pirwad
Quepem Goa

*....(Deleted as per
order dated 08/04/2024*

....RESPONDENTS

Mr. Shivan Desai with Ms. Maria Viegas Advocate for the Petitioner.

Mr. Aldrin Monteiro, Advocate for Respondent Nos. 4 and 8.

Mr. Somnath Karpe, Additional Public Prosecutor for Respondent Nos. 1, 2 and 3.

CORAM:

BHARAT P. DESHPANDE, J

RESERVED ON:

14th October, 2024.

PRONOUNCED ON:

02nd December, 2024

JUDGEMENT :

1. Rule.
2. Rule is made returnable forthwith.
3. Heard parties with consent for final disposal at the admission stage.

4. The Petitioner filed the present petition challenging the order dated 18/10/2023 passed by the Deputy Collector/Sub Divisional Magistrate at Quepem under Section 117 read with 107 of Criminal Procedure Code (Cr.P.C. for short) and accordingly, directed the Petitioner/Party No. 2 therein that the bond submitted shall be furnished and till then the Party No. 2 shall be in judicial custody.

5. Mr. Desai would submit that first of all the proceedings initiated by Respondent No. 2 under Section 107 of Cr.P.C. are not at all maintainable as in the year 2009 itself, the case under Section 145 of Cr.P.C. was filed and decided in favour of the Petitioner by holding that the Petitioner is in possession of the property including the management of the religious place which is called as '*Dargah*' of Pir Goa/Babar Pir situated in survey No. 43/22 of Quitol Village of Quepem Taluka. He would submit that such order was challenged before this Court in WPCR 402/2022(F) and vide order dated 06/09/2022, the said petition was disposed of. He submits that the Private Respondents are therefore, not entitled to claim possession over the said *Dargah* including the Sanctum Sanctorum which is in possession of the Petitioner including the management of

the said *Dargah*. He would submit that the order passed by the Sub Divisional Magistrate (SDM for short) in the year 2009 and confirmed in the year 2023 remains in operation till the dispute is decided by a Civil Court. He submits that the Petitioner vide his letter only informed the concerned authorities that in view of the forthcoming festival/celebration, there is a possibility that the Respondents can create some disturbance and accordingly, Police Protection should be provided however, instead of acting upon such letter, the SDM initiated the proceedings under Section 107 of Cr.P.C., though it was not necessary and asked the parties to execute the bonds.

6. Mr. Desai would submit that even though enquiry was conducted and it was pointed out to the SDM that the management as well the possession of the *Dargah* is with the Petitioner, he forfeited the bond while passing the impugned order which is arbitrary, unwarranted and requires to be quashed and set aside.

7. Per contra, Mr. Monteiro appearing for the Respondent Nos. 4 and 8 while supporting the impugned order would submit that the Petitioner is in the habit of locking the

sanctum sanctorum and preventing the Devotees from entering into the said area to perform their religious rites. He submits that though an order was passed by the SDM in the year 2009, the Petitioner had no authority to lock the said sanctum sanctorum. He submits that the Respondents intimated the SDM that there is a possibility of breach of peace due to such act of the Petitioner, and accordingly, the matter was initiated and bonds were executed, however, Petitioner by locking the gate created a situation where there is a threat of breach of peace and tranquillity in the area and therefore, order passed by SDM cannot be faulted with.

8. Mr. Karpe appearing for Respondents 1, 2 and 3 while supporting the contentions raised by other Respondents submits that the proceedings under Section 107 are permitted to be invoked even though earlier orders are passed under Section 145 of Cr.PC He submits that recently there was situation where possibility of breach of peace was eminent and thus, action of Respondent No. 2 cannot be faulted with.

9. Rival submissions would now fall for consideration.

10. It is a matter of record that dispute between Petitioner and the other Private Respondents is going on from the year

2009, itself. *Dargah* is situated in private property and since there was an issue of breach of peace in connection with possession of the said *Dargah*, proceedings were initiated before the SDM/South Goa, Quepem vide case No.MAG/145/1/2009/2508. In that matter the Petitioner was Party No. II. On receipt of the report from the Cuncolim Police Station, notices were issued to Party No. I and II. A copy of such notice is placed on record at annexure P-10.

11. Accordingly, both the parties appeared and filed their written statements as well as documents.

12. Deputy Collector/SDM after considering the written statements and documents, passed an interim order on 25/09/2009 which reads thus:-

ORDER

"It appears to me on the grounds duly recorded that a dispute between Party No. I and Party. No. II as regards the possession and management of the Darga PIR GOA/BABAR PIR situated at Sy. No. 43/22 of Quitol Village of Quipem Taluka, Is likely to cause breach of peace and disturbance to public tranquillity In the locality. Both the

parties were called upon to file written submission of their respective claims as to the fact of actual possession and management of the darga of 'PIR GOA/BABAR PIR' of Betul. Clarification heard from both sides. Thereupon without reference to the merit of the claim of either of said parties to legal right or possession of the darga, that the claim of actual possession of the Party No.II appears to be true. I hereby decide and declare that party No.II Is In possession of the said darga of 'PIR GOA/BABAR PIR' situated in Sy.No. 43/22 of Quitol Village of Quepem Taluka and entitled to retain possession of the same until ousted by due course of law and do strictly forbid any disturbance of their possession in the meantime by any other person. The management of the religious rituals/function be decided accordingly by taking Into consideration the faith and belief of Muslim citizens In the locality as has been done in the past, by party No. II.”

13. The said interim order as quoted above would clearly go to show that the SDM considered the claim of the respective parties, regarding the legal rights or possession of *Dargah* and found that the claim of actual possession of Party

No.II/Petitioner is true and accordingly, it was declared that the Party No. II is in possession of said *Dargah* situated in property bearing survey No. 42/2022 and the Petitioner is entitled to retain the possession till ousted by due course of law. It was also observed that the management of the religious rituals/functions be decided accordingly by taking into consideration the faith and belief of Muslim citizens in the said locality as has been done in the past by Party No. II.

14. Such interim order was challenged by the Respondents/Private Parties by filing a Criminal Revision Application No.85/2009 before the Sessions Court at Margao. By Judgment dated 18/01/2010, the said revision was rejected and the impugned order dated 25/09/2009 was upheld.

15. Admittedly, thereafter the matter remained pending before the SDM under Section 145 of Cr.P.C. and thereafter, no further steps were taken by both the parties.

16. Since some religious Trust was formed by the Private Respondent who started claiming rights over the said *Dargah*, Petitioner approached this Court by filing Criminal Writ Petition No. 402/2022 which came to be disposed of by the learned Single Judge of this Court (Corum G.S. Kulkarni, J.)

on 06/09/2022. While deciding the said petition, this Court directed the SDM to pass appropriate orders in the proceedings which were pending since 2009. The contentions of all the parties were kept open.

17. Thereafter and as directed by this Court, the SDM/Respondent No.2 disposed of the said proceedings under Section 145 of Cr.P.C. by its Judgment and Order dated 28/12/2022 and confirmed the interim order dated 25/09/2009.

18. Thus, it is clear that proceedings under Section 145 of Cr.P.C. were concluded by confirming the interim order. Admittedly, no further challenge was raised to such order and more particularly, by the Private Respondents.

19. The Petitioner somewhere in April 2023 informed Police Inspector, Cuncolim Police Station about organisation of the Annual *Urus* Festival starting from 30/04/2023 and disclosed that the proceedings under Section 145 Cr.P.C. were concluded in his favour confirming his exclusive right to manage and possess the said *Dargah* and accordingly, requested the concerned Police Station to make necessary arrangements to

ensure safety of the Devotees and to perform the said festival in proper manner.

20. The Concerned Authority without adverting to the letter forwarded by the Petitioner dated 24/04/2023, took up the matter under Section 107 of Cr.P.C. by registering case No. D2/QPM/MAG/107/2023 and issued summons cum show cause notice to the parties including the Petitioner to appear and execute a bond of Rs.25,000/- . These proceedings were initiated on the basis of a letter forwarded by the Police Inspector, Cuncolim Police Station dated 27/04/2023. The Petitioner as well as the other Respondents appeared and filed reply which resulted in passing the order dated 28/04/2023. By this order the SDM though considered the submissions of Party No. II i.e. the present Petitioner disclosing that the right of Party No. II is already decided by the High Court and the order passed by the SDM in the year 2023 and there is no challenge to such matter, observed in para no. 5 that the orders relied upon by the Petitioner shows that the Court has come to the finding that the management of the *Dargah* cannot be given to any person under Section 145 of Cr.P.C. and that Petitioner is relying upon preliminary order passed in

Cr.P.C. 145 proceedings to claim his managerial rights and restrict the religious rights of Party No. I.

21. Finally, the Concerned Authority observed that there is eminent threat to the peace and public tranquillity and therefore he is *prima facie* satisfied about the same and ordered under Section 111 of Cr.P.C. that Party No. II and Party No. I(a) and I(c) to furnish an interim bond of Rs.25000/- along with surety of like amount for six months for keeping peace and tranquillity until the case is decided.

22. Subsequently, on 18/10/2023, an order is passed under Section 117 r/w 107 of Cr.P.C., thereby observing that the report submitted by the Executive Magistrate stating that Party No.II/Petitioner has locked the gate of Sanctum Sanctorum of the *Dargah* on the date of the *Urus* and left the place thereby attempted to prevent Party No. 1 from performing the rituals and thus, created a threat to peace and tranquillity. Accordingly, the Petitioner was found violating the interim bond and accordingly, the order was passed to forfeit the amount and till that time, the Petitioner was sent to judicial custody.

23. With these background and the fact that earlier proceedings under Section 145 of Cr.P.C. were concluded in the year 2023 holding that the Petitioner is found in actual possession of the said *Dargah* and declared that the Petitioner is in possession of the said *Dargah* is entitled to retain possession until ousted by following due process of law and strictly forbid any disturbance of possession of the Petitioner in the meantime by any other person. The only question which was left out is the management of the religious rituals/functions which has to be decided accordingly by taking into consideration the faith and belief of Muslim Citizens in the locality. Thus, when the proceedings were already concluded in the year 2023 by the same Deputy Collector/SDO Quepem who passed the final order dated 28/12/2023 thereby confirming the interim order dated 25/809/2009, the possession of the plaintiff over the said *Dargah* was confirmed till he is ousted by due process of law. The order of the Deputy Collector dated 28/12/2022 was passed taking into account Section 145(6) (a) Cr.P.C. deciding that the Petitioner is in possession of the submit and is entitled to hold such possession until evicted by due process of law.

24. The provision of Section 145 of Cr.P.C are in chapter X which deals with maintenance of public order and tranquillity and clause (d) which deals with disputes as to immovable property.

25. Admittedly, the dispute between the Petitioner and the private Respondents is in connection with immovable property i.e. the *Dargah* of which Possession is already found with Petitioner by the Authority who conducted inquiry under Section 145 of Cr.PC. Thus, when this fact was brought to the notice of Respondent No. 2./Deputy Collector/SDM, Quepem, he ought to have considered it that the proceedings have already been culminated with regards to the possession of *Dargah* in favour of the Petitioner. The Petitioner thereafter intimated the concerned Authority including the Police Officer that his possession is required to be protected and the festival of *Urus* is forthcoming, there is a possibility by the Private Respondents to disturb his possession, the concerned Authority ought to have informed the Private Respondents to approach the Civil Court for redressal of their grievance or protection of their civil rights as far as the rituals to be carried out in the *Dargah* are concerned. Initiation of another

proceedings under Section 107 of Cr.P.C., to my mind was clearly unwarranted.

26. Chapter VIII of Cr.P.C. deals with security for keeping the peace and for good behaviour. Section 106 deals with security for keeping the peace on conviction whereas Section 107 deals with security for keeping peace in other cases. Hence when there is a specific provision with regard to possibility of breach of peace in connection with an immovable property provided under Section 145 of Cr.P.C., recourse to Section 107 in connection with such dispute was purely unwarranted. It is so specifically when the earlier proceedings by the same authority were concluded in the month of December 2022 by holding and accepting possession of the Petitioner over the said immovable property.

27. The scope and object of Section 107 and Section 145 of Cr.P.C. are different and it is not permissible for the concerned Authority or the Magistrate to mix up the said proceedings. It is no doubt true that there is no ban to take up the proceedings simultaneously under both the sections but the occasion for doing so would be unusual and in an even it would be proper to keep both these events quite separate. The element of

breach of peace or possibility of such breach of peace and tranquillity in the area is common to both the above sections. Section 145 of Cr.P.C cannot be invoked when there is no involvement of any immovable property qua the breach of peace. However, Section 107 is specifically carved out in Chapter VIII which deals with Security for keeping breach of peace and good behaviour. It mostly affects the cases where the convicts are about to create any breach of peace in the Society. Section 107 is titled as security for keeping the peace in other cases. The wordings ‘other cases’ would clearly indicate that it is separate with regard to the cases involving immovable properties.

28. The matter in hand would clearly go to show that immovable property is involved i.e. the *Dargah* in the present matter and earlier proceedings initiated in the year 2009 under section 145 of Cr.P.C. have been already disposed of on 28/12/2022 clearly holding that the Petitioner is in possession of the said *Dargah*.

29. Thus, only because there is another report filed by the Police Officer regarding breach of peace, the concerned authority could not have invoked section 107 by ignoring the

earlier order passed by the same authority under Section 145 of Cr.P.C. Hence there would be no sanctity of the order which is decided by the same authority on 28/12/2022.

30. Every year the festival/*Urus* is celebrated in the said *Dargah*. Accordingly the possibility of the breach of peace in connection with the said *Dargah* is eminent at the time of every festival. However, the police authorities are duty bound to abide by the orders passed by Dy. Collector u/s 145 of Cr.P.C. holding that the Petitioner is in possession of the said *Dargah*. His possession has to be protected until he is evicted by due course of law.

31. If the private Respondents are considered themselves aggrieved by the order dated 28/12/2022, they could have filed proceedings against it. Admittedly such order is not challenged. There are no civil proceedings filed by the Respondents to claim their rights of conducting religious ceremony in the said *Dargah*. Once the Petitioner is found to be in possession of the said *Dargah*, he cannot be evicted by passing the orders under Section 107 or by directing to execute the bond.

32. More so, the proceedings initiated under Section 107 of Cr.P.C. itself are required to be considered as unwarranted as the matter certainly pertains to immovable property and therefore, the authority was not supposed to mix up both these provisions at two different occasions. The imposition of forfeiting of bond and asking the Petitioner to remain in judicial custody till then, was clearly required to be considered as without application of mind as well as perverse order for the simple reason that the proceedings under Section 145 of Cr.P.C., were already decided by the same authority in respect of the same property.

33. Provisions of Section 107 and 145 of Cr.P.C. are different and operate under different circumstances. Provisions of Section 107 could be initiated in other cases and more particularly where there is no involvement of any immovable property. The matter in hand would clearly go to show that certainly the immovable property i.e. *Dargah* is clearly at the Centre stage and involved in the dispute between the parties. Thus, the proceedings initiated under Section 107 by the concerned authority/Respondent No. 2 inspite of the knowledge that earlier the proceedings under Section 145 of

Cr.P.C. are already disposed of in favour of the Petitioner, was clearly considered as jurisdictional error which needs to be corrected in the present proceedings.

34. For the above reasons, the impugned order dated 18/10/2023 passed by Respondent no. 2 is hereby quashed and set aside.

35. Rule is made absolute in above terms.

BHARAT P. DESHPANDE, J.