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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 50 OF 2021

Mr Tehzeen Shaikh, Wife of Mr Tabrez Shaikh, 34 years of age, married, Service, Indian National, r/o. G-3, Kamat Palace, Sim-Khorlim, Mapusa, Bardez-Goa.Petitioner.

versus

1. State of Goa, through Public Prosecutor of High Court of Bombay of Goa, at Porvorim, Bardez, Goa.
2. Police Inspector/Incharge, Mapusa Police Station, Mapusa Bardez Goa.
3. Mr Rhys Da Costa, s/o. Mr William F. E. Da Costa, 40 years of age, Proprietor of "79 The Pet Shop" Having its registered office at Shop No.D4, Rimjim Plaza, Mapusa, Goa.Respondents.

Mr Dinesh Naik and Mr Richal Shirodkar, Advocate for the petitioner.

Mr Shailendra G Bhobe, Public Prosecutor for respondent nos.1 and 2.

Ms Caroline Collasco, Advocate for respondent no. 3.

CORAM:

BHARAT P. DESHPANDE, J.

DATE:

2nd APRIL 2024

ORAL JUDGMENT.:

1. Rule. Rule is made returnable forthwith.

2. Heard finally with consent.
3. Petitioner being aggrieved by the notice issued by the learned trial Court in Criminal Misc. Application No. 46 of 2020, preferred present petition with the following prayers:-

- a. *To call for records and proceedings and to issue Writ of Certiorari, order, or direction to quash and to set aside the Criminal Misc. Application bearing No.46/2020 pending before the Hon'ble District Judge-1 and Additional Sessions Judge at Mapusa against petitioner.*
- b. *Till the pendency of the present Petition the proceeding in Criminal Misc. Application bearing No. 46/2020 pending before the Hon'ble District Judge-1 & Additional Sessions Judge at Mapusa be stayed.*
- c. *Ad-interim ex-parte relief/s in terms of prayer clause(b) above.*
- d. *May pass such other order or orders, relief/s as this Hon'ble Court may deem fit and proper in the interest of justice.*

4. Mr Naik, learned counsel appearing for the petitioner would submit that first of all there is no material produced in such proceeding against the petitioner and that the affidavit filed by the petitioner in Bail Application cannot be termed as evidence. He submits that proceeding filed before the trial Court bearing Criminal Misc. Application be quashed and set aside. While arguing the matter, Mr Naik claimed that notice issued to the petitioner needs to

be quashed and set aside for the simple reason that in order to conduct an inquiry under Section 340 of Cr.P.C., presence of the petitioner who is considered to be a proposed accused is not necessary. He submits that the petitioner on the basis of such notice is unnecessarily asked to appear and file a reply.

5. Mr Naik while placing reliance in the case of ***Aarish Asgar Quereshi Vs Fareed Ahmed Quereshi and another***,¹ would claim that proceeding needs to be closed as the affidavit filed by the petitioner cannot be termed as evidence for the purpose of taking action under Section 195(1)(b) of Cr.P.C.

6. Per contra, learned Public Prosecutor Mr S. G. Bhobe, appearing for the State would submit that first of all the petitioner being proposed accused in Criminal Misc. Application No. 46/2020 ought not to have been summoned by the Court as the said Court is required to conduct a preliminary inquiry only to find out whether there is any material to proceed under Section 195 of the Cr.P.C. and in such proceeding appearance or participation of the proposed accused is unwarranted.

7. Mr Bhobe, while placing reliance in the recent judgment of the Apex Court in the case of ***State of Punjab Vs Jasbir Singh***,² would submit that a reference to three Judges Bench is answered

¹ 2019)18 SCC 172

² Criminal Appeal No. 335 of 2020 decided on 15.9.2022

specifically by relying upon the Constitutional Bench judgment in the case of ***Iqbal Singh Marwah Vs Meenakshi Marwah***.³

8. Learned counsel Ms C. Collasso appearing for the respondent no.3 while supporting the contention raised by Mr Bhobe would submit that impugned notice needs to be quashed and set aside. However, other prayers of the petitioner cannot be entertained at this stage.

9. Rival contention falls for determination.

10. The impugned notice dated 20.7.2021 in Criminal Application No.46/2020 issued by the learned District Judge-I and Additional Sessions Judge Mapusa, is in fact on an application filed by the respondent no.3 under Section 340 of Cr.P.C. read with Section 195(1) (b) of Cr.P.C. Respondent no.3 filed such application claiming therein that the petitioner filed an affidavit in support of Ms Palasha Tilve in Anticipatory Bail application no. 97/2020 wherein she made some false allegations against the petitioner. It is the contention of respondent no. 3 that affidavit filed by the petitioner contains a false statement on oath and, therefore, it amounts to giving false evidence.

11. Learned trial Court while taking cognizance of such application filed under Section 340 read with section 195 of Cr.P.C., issued the notice to the present petitioner thereby directing her to appear in the

3 (2005) 4 SCC 730

said proceeding and file reply.

12. Though the petitioner is challenging the entire proceeding in Criminal Misc. Application no. 46/2020, Mr Naik learned counsel for the petitioner submitted that only the notice needs to be quashed and set aside at this stage since the petitioner had no role to play in such inquiry, if any.

13. In the case of ***State of Punjab Vs Jasbir Singh***,⁴ Hon'ble two Judges Bench of the Apex Court made a reference to the larger Bench by framing following questions:

“(i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?

(ii) what is the scope and ambit of such preliminary inquiry?”

14. Reference is now decided by Hon'ble Three Judges Bench vide order dated 15.9.2022 in Criminal Appeal No. 335 of 2020. While dealing with said questions referred to it, reliance is placed on a Constitutional Bench Judgment in the case of ***Iqbal Singh Marwah*** (supra) and more particularly paragraph 23 which reads thus:-

4 (2020) 2 SCC 96

“23 In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint.”

15. While answering the questions referred to it, the Apex Court observed finally thus:

“We have little doubt that there is no question of opportunity of hearing in a scenario of this nature and we say nothing else but that a law as enunciated by the Constitution Bench in Iqbal Singh Marwah’s case (supra) is in line with what was observed in Prithvi’s case (supra).”

16. Accordingly, notice issued by the learned trial Court to the

petitioner in Criminal Misc. Application No. 46 of 2020 is required to be quashed and set aside in view of the above observations.

17. The question of hearing or participation of the accused or would be accused in a preliminary inquiry under Section 340 of Cr.P.C. is not warranted.

18. Learned trial Court is entitled to conduct preliminary inquiry by following principles laid down in paragraph 23 of ***Iqbal Singh Marwah's case*** (supra). Accordingly, petition is partly allowed. Impugned notice dated 20.7.2021 in Criminal Misc. Application No. 46/2020 is hereby quashed and set aside. However, learned trial Court is directed to proceed with the preliminary inquiry under Section 340 of Cr.P.C. in accordance with law and consistent with the declaration of law as laid down by the Apex Court in the case of ***Iqbal Singh Marwah*** (supra)

19. Rule is made absolute in the above terms.

20. Petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.

VINITA VIKAS NAIK

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