Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION 16 OF 2024
AND
CRIMINAL WRIT PETITION 17 OF 2024
WITH
CRIMINAL MISC. APPLICATION NO.2 OF 2024
IN
CRIMINAL WRIT PETITION 16 OF 2024
WITH
CRIMINAL MISC. APPLICATION NO.83 OF 2023
IN
CRIMINAL WRIT PETITION 17 OF 2024

1. Churchill Alemao
son of late Braz Alemao,
aged 70 years, resident of 150,
Novangully, Varca, Salcete, Goa.

2. Mr. Warren Alemao,
son of late Alvernaz Alemao,
aged 33 years, resident of H.No.150,
Novangully, Varca, Salcete, Goa .....PETITIONERS

VERSUS

1. State,
through the Police Inspector,
Colva Police Station,
Colva, Salcete, Goa.

2. Mrs. Sandra Mascarenhas,
wife of Mr.Luciano Leandro Mascarenhas,
aged about 56 years, resident of
151, Novowaddo, Varca, Salcete, Goa.

3. Mr. Quellon Alemao,
son of late Ciabro Alemao,
aged 32 years, resident of H.No.148/C,
Novangully, Varca, Salcete, Goa

4. Mr. Savio Alemao,

son of Churchill Alemao,
major of age, resident of H.No.150,
Novangully, Varca, Salcete, Goa .....RESPONDENTS

Shri J.E. Coelho Pereira, Senior Counsel with Mr. Vledson Braganza and Mr. Pancham Phadte, Advocates for the Petitioners.

Mr. S. Karpe, Additional Public Prosecutor for Respondents in WPCR.16/2024.

Mr. Nikhil Vaze, Additional Public Prosecutor for Respondents in WPCR.17/2024.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 11th JUNE, 2024

PRONOUNCED ON: 28th JUNE, 2024

JUDGEMENT

1. Rule.

2. Rule is made absolute returnable forthwith.

3. Both these matters are taken up for final disposal at the admission stage with consent of the parties.

4. Respondent No. 2 who appeared in person filed written arguments and she stated on 17.04.2024 that she will not be able to argue the matter personally and that her written submissions be considered as arguments. This fact is recorded in the order dated 17.04.2024. Accordingly, arguments were advanced on behalf of

the petitioners and the other respondents.

5. Mr. Perreira would submit that both the impugned orders, the one passed by the Sub-Divisional Magistrate and thereafter by the First Appellate Authority/District Judge, Margao, in Criminal Revision Application No.1/2020 and Criminal Revision Application No.1/2021 though decided by common judgement, needs interference under extraordinary and supervisory powers of this court. He would submit that the claim raised by respondent no.2 before the police and thereafter before Sub Divisional Magistrate is clearly a private right in the form of easement through the property belonging to the petitioner and that such right has been considered along with the conclusion that there exists a public road through the property of the petitioners. He submits that such observations specifically by the First Appellate Court amounts to declaration that there exists a public road through the property of petitioner which is clearly beyond the jurisdiction and the scope under which the matter was pending before the Sub Divisional Magistrate and thereafter before the First Appellate Court.

6. Mr. Perreira would submit that there is a serious dispute as to whether the claim raised by respondent no.2 and more

particularly proceedings initiated under Section 145/147 of the Criminal Procedure Code (Cr.P.C) under the garb of breach of peace in the locality were infact proceedings to claim easementary rights before the authority who is not competent to deal with such aspect.

7. Mr. Perreira would submit that the Sub Divisional Magistrate though found that there is no public road, however, directed the petitioner to maintain an access of 1.5 mtrs through the property of petitioners. The learned First Appellate Court without considering the material on record and more so by allowing additional documents claiming to be public documents, exceeded its jurisdiction by declaring it as a public road and thereafter directing the petitioner to maintain such road.

8. Mr Perreira submits that respondent no.2 filed a writ petition before this court bearing no.19/2016 which was rejected by this court, wherein it was observed that since there are disputed questions of fact and since there is no concrete material to show that a public road exists through the property of petitioner, refused to entertain such a petition. A Special Leave Petition (SLP) filed against such order was also rejected by the Apex Court.

9. Mr. Perreira would submit that the claim of respondent no.2 is basically a claim of easementary right to proceed through the property of petitioner in order to approach her house. He submits that though earlier the said portion was asphalted, it is not a public road and such portion is part and parcel of the property of petitioner. He submitted that the Chapel existing in the property of petitioner is a private Chapel and there is no material at all to show that the public in the said area goes to attend the said Chapel or that it is a public Chapel.

10. He submits that the observations of the learned First Appellate Court travelled beyond its jurisdiction as the said court practically declared it as a public road as well as a public Chapel, which is not permissible under the proceedings conducted under Section 145/147 of Cr.P.C.

11. Mr. Perreira would submit that no civil proceedings have been filed by respondent no. 2 to get a declaration about her easementary rights. The orders passed under Section 145/147 Cr.P.C are only to maintain public peace and tranquillity in the area for time being. Such orders cannot be considered as perpetual or binding for all the time.

12. Mr. Perreira would submit that the powers of the Sub Divisional Magistrate to conduct such proceedings and to pass orders comes only when there is finding about breach of peace in the area. Unless such findings are recorded, the Magistrate is not entitled to pass any directions as provided under the said provisions.

13. He submits that in the present matter, neither the Sub Divisional Magistrate nor the First Appellate Authority recorded any finding about possibility of breach of peace in the said area.

14. Mr. Perreira would then submit that the matter in dispute is only allegedly affecting respondent no. 2 alone and not to any other person or public in the said locality. Thus, it cannot be a matter of breach of peace. He submits that no police officer ever spoke about the possibility of breach of peace at the relevant time or thereafter due to the alleged activities carried out by the petitioner i.e. removing of the asphalted portion existing in his property. Further, there is no likelihood of breach of peace within the said locality, simply because some onlookers gathered at the spot would not in any manner amount to breach of peace within the said locality.

15. Finally Mr. Perreira would submit that both the authorities exceeded its jurisdiction and dragged the proceeding for years together which is not the purpose of such proceedings.

16. Mr. Perreira while relying on the observations of this court in Writ Petition No.19/2016, the order of Apex Court while rejecting SLP and the decision in case of ***M. Siddiqui (Ram Janmabhumi Temple Case) V/s Suresh Das, 2020 (1) SCC 1*** to support his contention about the scope of proceedings under Section 145 of CRPC.

17. The written submissions filed by respondent no. 2 would go to show that she has basically relied upon the observations of First Appellate Court and the additional documents produced before him. She relied upon the affidavits filed by the officer of PWD and the petitioner no.1 himself in Writ Petition No. 19/2016 to claim that the said persons admitted that it was a tar road and the asphalting was carried out at the behest of the Government.

18. Respondent No.2 further claimed that when there are such admissions in public documents, she is entitled to produce it before the Revisional Court who has rightly considered it and thus, no interference is necessary.

19. Mr. Karpe appearing for the State candidly submitted that first of all there was no breach of peace and that the learned Revisional Court clearly exceeded its jurisdiction and thereby declared the said portion of property of petitioner as a public road. He also submitted that learned Sub Divisional Magistrate while observing that no case is made out for any order, suddenly asked petitioner to maintain 1.5 mtrs. access through his property. He also admitted that such proceedings ought to have been disposed of summarily. However, in the present case, such matter was dragged for a period of six years as the case before the Sub Divisional Magistrate was filed in the year 2013 whereas the judgement was passed by the Sub Divisional Magistrate in the year 2019.

20. Rival contentions fall for determination.

21. In order to appreciate the facts of the present matter and the scope of enquiry contemplating under Section 145/147 of Cr.P.C., it is to be kept in mind that these provisions fall within Chapter X of Cr.P.C which deals with maintenance of public order and tranquillity. Sections 145 to 148 of Cr.P.C. is having a title as dispute as to immovable properties.

22. In such proceedings, a report of the police officer is

necessarily to be filed before the Executive Magistrate. On perusal of such report and if satisfied on the basis of such report or other information that a dispute likely to cause a breach of peace concerning any land or water or the boundaries there of, is entitled to make an order in writing stating the ground of his being so satisfied and requiring concerned parties in such dispute to attend this Court and put up their written statements or claims in respect of the fact of actual possession of subject of dispute. Thereafter, the Executive Magistrate is entitled to conduct an enquiry and that too without reference to the merits or the claims of any of the parties who have right to possess the subject of dispute, pass such order or decide whether any and which of the parties was at the date of the order made by him, under sub-section (1), was in possession of the subject dispute.

23. An enquiry in respect of Section 147 of Cr.P.C. is with regard to the alleged right of user of any land or water, however, while dealing with such enquiry the Magistrate if possible decides whether such right exists and the provisions of Section 145 of Cr.P.C. shall, so far is may be, apply in the case of such enquiry. If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the existence of such

right, including, in a proper case, an order for removal of any obstruction in the exercise of any such right.

24. Thus, the scheme of Chapter X of Cr.P.C. is basically to maintain public order and tranquillity within jurisdiction of the concerned Magistrate. While doing so, he is empowered to conduct necessary enquiry whenever there is any incident of or possibility of breach of public peace. If the Magistrate is satisfied that such rights exist or the dispute exist, he may make such orders only to control or to prevent any breach of public peace in the said area. Such orders passed by the Magistrate are not at all deciding the respective rights of the parties since it cannot be termed as a proceedings for deciding such rights. The main purpose is only to maintain peace and tranquillity in the area by passing some preventive orders so that the parties could approach the Competent Court for declaration of their rights or adjudication of their disputes.

25. The Apex Court in ***M. Siddiq (Ram Janmabhumi case) (supra)*** discussed in details the scope of Section 145 of Cr.P.C. and more specifically in paragraph 295 and 296 which reads thus:

295. *Section 145 is recognised to be a branch of the*

preventive jurisdiction of the Magistrate, Section 145(1) can be invoked on the satisfaction of the Magistrate that "a dispute likely to cause a breach of the peace exists…". The provision relates to disputes regarding possession of land or water or its boundaries which may result in breach of the peace. The function of the Magistrate is not to go into questions of title, but to meet the urgency of the situation by maintaining the party in possession. The Magistrate is empowered to call upon the parties to put in written statements in support of their claim to "actual possession". Such an order is to be served as a summons upon the parties. The Magistrate is to peruse the statements, hear the parties and weigh the evidence, in order to ascertain who was in possession at the date of the order. The Magistrate may make that determination "if possible" to do so. Moreover, the determination is about the factum of possession on the date of the order "without reference to the merits of the claim of any of such parties to a right to possess the subject of the

dispute". These words indicate that the Magistrate does not decide or adjudicate upon the contesting rights to possess or the merits of conflicting claims. The Magistrate is concerned with determining only who was in possession on the date of the order. If possession has been wrongfully taken within two months of the order, the person so dispossessed is to be taken as the person in possession. In cases of emergency, the Magistrate can attach the subject of the dispute, pending decision. The action ultimately contemplated under Section 145 is not punitive, but preventive, and for that purpose is provisional only till a final or formal adjudication of rights is done by a competent court in the due course of law. Thus, nothing effecting the past, present and future rights of parties is contemplated under the provision.

296. *The object of the provision is merely to maintain law and order and to prevent a breach of the peace by maintaining one or other of the parties in possession, which the Magistrate finds they had immediately before the dispute, until the actual right*

> *of one of the parties has been determined by a civil court. The object is to take the subject of dispute out of the hands of the disputants, allowing the custodian to protect the right, until one of the parties has established her right (if any) to possession in a civil court. This is evident from the provisions of sub-section (6) of Section 146. The Magistrate declares the party which is entitled to possession "until evicted therefrom in due course of law". While proceeding under the first proviso, the Magistrate may restore possession to a party which has been wrongfully and forcibly dispossessed. No party can be allowed to use the provisions of Section 145 for ulterior purposes or as a substitute for civil remedies. The jurisdiction and power of the civil court cannot in any manner be hampered.*

26. From the bare perusal of the observations of the Apex Court would clearly go to show that the proceedings in Chapter X is considered as a branch of preventive jurisdiction of the Magistrate. He can invoke, on satisfaction that a dispute likely to cause breach of peace exists.

27. It is really unfortunate that the proceedings launched before the concerned Magistrate in the year 2013 on the behest of Colva Police Station as a chapter case No. 1/2013 under Section 145 of Cr.P.C was dragged for six years when finally the Magistrate passed the order.

28. The proceedings were launched before a Magistrate in view of the report filed by Colva police on 15.02.2013 where in its reported that on 08.01.2013, at around 21:15 hours information was received from the control room Panaji that illegal levelling and excavation of land is being carried outside the house of the present petitioner no.1 at Varca. Accordingly, the PCR van and the staff was directed to verify the information. The officers who visited the spot confirmed the information stating that the crowd is also gathered. Accordingly, site was inspected by the officials of Colva police and at that time it was noticed that outside the residential house of the petitioner no.1 at Varca excavation of tarred/asphalted surface was in progress. The said area was consisting of open area outside the residential house which was probably used for parking of vehicles. It was also observed that the excavated portion was leading to the house of respondent no. 2, Sandra. The excavation was done exactly infront of the gate

leading to the plot of respondent no. 2 due to which their access in the property was deprived.

29. The report further shows that respondent no.1 was requested to stop the excavation work and even the machinery was attached and brought to the police station. The Contractor was carrying out excavation was also summoned who stated that such work was carried out at the instance of petitioner no.1.

30. The report further shows that on 09.01.2013, respondent no.1 appeared at the police station and lodged a written complaint to the effect that on 08.01.2012 between 18:30 hrs to 22:20 hrs at Varca, the petitioner no.1 and his family members with common intention hired excavation machinery, truck and thereafter excavated from the tarred road exactly opposite to the main gate of the Complainant's compound whereby making it impossible for her to use it and restrain them from coming out of the gate. While doing so the petitioner no.1 and others also damaged the water pipelines and the tarred portion of the road outside the compound and the gate as well as in front of Sebastian Chapel and abused the complainant and her family members. Accordingly, offence vide Colva P.S. crime no.5/2013 under Sections 143, 147, 504, 506, 341 r/w with 149 of the Indian Penal Code (IPC) and Section 3 of the

Prevention of Damage to Public Property Act stands registered.

31. Though such report is lodged under Section 145 of Cr.P.C., the impugned order passed by the Executive Magistrate dated 16.10.2019 shows that the case was registered under Section 147 of Cr.P.C. The learned Executive Magistrate/Sub-Divisional Magistrate conducted an enquiry and finally observed that there is no material to prove that the tarred portion existing in the plot of the petitioner is a public road or that the said land was any time acquired by the Government.

32. In the meantime, it is also the matter of record that the FIR registered against the petitioner and others was enquired into and a charge-sheet was filed before the learned Magistrate at Margao, however, the petitioners and others being accused were discharged by the learned Magistrate.

33. It is also a matter of record and basically after perusing the orders passed by the learned Executive Magistrate dated 16.10.2019 it shows that there is no finding to the effect that there exist any right in favour of respondent no.2/complainant therein and more specifically right of way passing through the property of petitioner.

34. The entire emphasis during the enquiry is that the portion in the property of the petitioner was asphalted being a public road leading to the house of respondent no.2/complainant. Efforts were made by respondent no.2, during the enquiry before the Executive Magistrate to produce in all 25 documents as found referred in the judgement, itself. However, the main contention is that respondent no.2 was prevented or obstructed or deprived from using the access upto her house and through the property of the petitioner. It is also contended that the petitioner by removing the tarred/asphalted portion upto the gate of respondent no.2, prevented from using said portion as an access.

35. The learned Magistrate though mentioned that the proceedings were filed under Section 147(1) of Cr.P.C., the report of the Colva Police shows otherwise. It refers to the proceedings under Section 145 of Cr.P.C. There is no record to show as to when the proceedings were converted into Section 147 of Cr.P.C. by the concerned Magistrate.

36. Be that as it may, the provisions of Section 147 of Cr.P.C. clearly shows that the procedure to be adopted is as mentioned under Section 145 of Cr.P.C. However in the said provisions it is again to the satisfaction of the Executive Magistrate on the basis of

report of Police Officer or upon other information, that dispute likely to cause breach of peace exist regarding any alleged right of user of any land or water, within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing stating the grounds of he being so satisfied and requiring the parties concern in such dispute to attend his court and put up their respective claims/written statement. Sub section (2) of Section 147 of Cr.P.C. further provides that the Magistrate shall, then peruse the statements so put in, hear the parties, receive such evidence as may be produced by them, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists and the provisions of section 145 shall, so far as may be, apply incase of such enquiry.

37. Thus, it is clear from the above provision that first of all the satisfaction of Magistrate that there is likelihood to cause a breach of peace due to such dispute must exist. Secondly, the reason for breach of peace is due to the alleged right of the user of any land or water, whether such right is an easement or otherwise. After receiving such evidence, the Magistrate if possible decides whether such right exists. Thus, the jurisdiction of the Magistrate

must be expressed in clear words on the basis of his findings firstly that due to the dispute, there is likelihood of breach of peace in the locality and whether such rights exist.

38. The perusal of the judgement passed by the Executive Magistrate dated 16.10.2019 nowhere observed that due to such act on the part of the petitioners i.e. excavating the tarred portion in his own property, there was likelihood of breach of peace in the locality. Even the police officer who is examined before the Magistrate clearly admitted that there was some quarrel with respect to the access on 8.01.2013, but there was no further quarrel thereafter to his acknowledge. The quarrel which the police officer referred is only on the basis of some phone call received at the control room. Though he claimed that he did not visit the site personally, some officers from Colva police station visited the site and at that time crowd was present on the spot. However, there is absolutely no statement or any material to show that there was likelihood of breach of peace. Only because some members of public gathered at the spot at the time of arrival of the police, it cannot be said that there is possibility of breach of peace. The entire jurisdiction of the police officer to submit report and thereafter that of the Executive Magistrate to initiate proceedings

is basically on the findings that there was possibility of breach of peace and therefore, it was necessary to pass orders so as to maintain public peace and tranquillity in the area.

39. Not a single witness from that area apart from respondent no.2 was examined to show that there was a possibility of breach of peace.

40. It is admitted fact that respondent no.2 filed a separate complaint on the next date that is on 9.01.2013 at Colva police station in connection with the same incident. An offence was registered against the petitioner and others and even a charge sheet was filed before the concerned Magistrate wherein the petitioners were discharged.

41. Coming back to the order passed by the Executive Magistrate, it is found that the findings are appearing only in last two pages and since there are no paragraphs, it is difficult to refer specifically. Such findings appears from page 83 onwards of the paper book. The entire stress or the focus was to show that the said portion which was asphalted was a public road.

42. The learned Executive Magistrate referred to the statement of respondent no.2(Party No.1), wherein she stated that she was

seeking access over the property bearing number 11/2018 of village Varca and the said property was owned by the PWD. However, she also admitted that she was not aware whether the said land under survey no. 11/18 was acquired by PWD and that no document to that effect is produced. She also admitted during cross-examination that her husband Luciano Mascarenhas had applied to the Government to acquire the property surveyed under no. 11 of 18 of village Varca to provide access to their house and that the said proposal was cleared, however, subsequently the acquisition proceedings were dropped by PWD at her request.

43. The learned Executive Magistrate completely lost the sight of the purpose of such enquiry, its scope and the orders which he could pass only after observing that there was possibility of breach of peace and that there exists some right of way over the said property. Once such observations are found missing, the direction issued by the Executive Magistrate and more specifically in para 2 of its operative order directing the petitioners to maintain 1.5 mts. access through the property surveyed under survey number 11/2018 of village Varca leading to the house of party no.1 that is respondent no.2 herein, is clearly beyond the scope and jurisdiction.

44. It is a fact that the present respondent no.2 filed a petition before this court bearing writ petition no. 19/2016 which was disposed of vide order dated 26.07.2016. The observations of this Court are very much relevant including the facts about the statements made therein. Para 9 of the said order reads thus:-

> *9. In the present petition as pointed out herein above the petitioners are claiming a right of way through the subject road. The averments in the legal notice pointed out by Shri Pereira, learned Senior Counsel for the respondent no.5 clearly suggests that the petitioners prima facie are claiming a prescriptive right of access over such road. This aspect is seriously disputed by the respondent no.5 as can be seen from the affidavit on record. In such circumstances, we find that the question of examining the contention raised in the petition at the instance of the petitioner would not be justified in the Petition filed under Articles 226 and 227 of the Constitution of India. The claim of prescriptive right of suit of access would have to be examined in a proper Forum. The records also suggest that the*

petitioners had even attempted to acquire the road by making a representation to the Government. Apart from that with regard to the contention of Shri Lawande, the learned Counsel appearing for the petitioners that the subject road is a public road and as such, it is the duty of the concerned departments to ensure that there is no defacement thereof, we find, as pointed out herein above, the stand taken by the respondent no.3 is clearly that the road is located in a private property of the respondent no.5. Though Shri Lawande, learned Counsel for the petitioners has taken us through some Noting to point out that such road is a public road, these are matters which have to be adjudicated in proper Forum after the parties lead evidence with regard to their respective stands. Admittedly the subject road was not acquired nor the respondent no.3 is claiming ownership rights therein. Such disputed question of fact on the title of the respective parties are not matters which can be adjudicated in the Petition under 226 of the Constitution. As rightly

pointed out by Shri Pereira, learned Senior Counsel appearing for the respondent no.5, there are disputed questions of fact on the claim of the petitioners that the subject road is a public road as well as whether the alleged area excavated was in fact asphalted at the cost of the public exchequer. Considering that there are disputed factual contentions raised by the parties in the petition, we find that the records produced would not assist us to come to a definite conclusive view with regard to the claim of Shri Lawande, learned Counsel for the petitioners that the road was constructed at the cost of public exchequer and that the respondent no.5 should be directed to restore it.

45. It is also a matter of record that respondent no.1 challenged such findings before the Apex Court by filing Special Leave to Appeal No. 34400/2016. By an order dated 07.09.2022, the Apex Court observed thus:

ORDER

"The instant special leave petition takes exception to the order dated 26.07.2016 passed by the High Court of Bombay Judicature at Goa,

rejecting Writ Petition No.19 of 2016 preferred by the petitioners.

The basic submission of the petitioners has been that the road in question was rebuilt using the funds of the public exchequer and as such the character of the road is public in nature and therefore, the contesting respondents were not within their rights in digging up the stretch of road.

The High Court however found that the nature of dispute brought before it required assessment of facts, which as a writ court, it would not be inclined to enter into it. It therefore rejected the petition; which order is presently under challenge.

During the pendency of the instant proceedings, at the instance of the present petitioners, the matter was looked into by the Sub-Divisional Magistrate in exercise of power under Section 147 of the Code of Criminal Procedure. After considering the entirety of the matter, the Sub-Divisional Magistrate by its order dated 06.10.2019 came to certain conclusions including conclusion no.1 which reads as under :

1. The Prosecution has failed to prove that the portion excavated by Party No.2 was public road tarred by PWD.

> *Both the parties have challenged the decision of the Sub- Divisional Magistrate and the matter is being looked into by and is pending before the Sessions Court.*
>
> *In the aforestated circumstances while exercising writ jurisdiction, it would not be possible for us to consider plea whether the road in question is a public road or not. Since the matter has been engaging the attention of the authorities whose jurisdiction was invoked by the present petitioners, we leave the parties to their remedies.*
>
> *With these observations, the special leave petition is disposed of.*
>
> *Pending interlocutory application(s), if any, shall also stand disposed of".*

46. From the perusal of the orders passed by the Division Bench of this Court and even by the Apex Court, the entire case of respondent no.2 is that there was a public road and the petitioner excavated the tarred portion of the road.

47. The petitioner did not dispute about the existence of the tarred portion in his property but claimed that the predecessor in title asphalted it from its own funds and after the purchase the petitioner also asphalted it, however, subsequently he removed it as it is his own property and no right of way exists through his

property. It is also his contention that the Chapel existing in his property is a private Chapel.

48. At this stage it is necessary to note that existence of Chapel in the property belonging to the petitioner is not in dispute, however, there is absolutely no whisper as to whether such Chapel is a public Chapel or a private Chapel in the police report which was filed before the Magistrate by Colva police station and subsequently, in the statement of claims raised/filed by the respondent no.2 that is the party no.1 or further in the evidence led before the Executive Magistrate.

49. However, this fact was suddenly considered by the First Appellate Court while deciding both the revision petitions, one filed by the petitioner and another filed by respondent no.2.

50. As rightly pointed out by Mr Perreira, the learned First Appellate Court and that too exercising its revisional powers, exceeded its jurisdiction by allowing respondent no. 2 to produce additional documents, holding it as public documents and then adjudicating that the Chapel existing is a public Chapel.

51. The learned First Appellate Court/Revisional Court was exercising jurisdiction under Section 397 of Cr.P.C. which is a

revisional power of the said Court. It is settled proposition of law that while dealing with revisional powers, the Revisional Courts in normal circumstances should not allow any party to produce additional material which was not produced before the Trial Court or before the Magistrate and to decide it as evidence for the purpose of deciding the revision petitions. At the most, the Revisional Court, if comes to the conclusion that such documents are relevant for deciding the matter, could have remanded the matter to the concerned Court or the Magistrate thereby directing the parties to produce such evidence by giving opportunity to each other and to decide it afresh.

52. The learned Revisional Court on the spacious premise that the affidavits filed by the official of PWD and the petitioner no.1 before the High Court in writ petition no.19/2016 are public documents and therefore, such documents could be considered while deciding the revision petition. First of all such findings of the learned Revisional Court are clearly unwarranted and perverse. The affidavit filed by the petitioner in the said petition is a private document. Similarly the affidavit filed by the concerned officer of PWD in the said proceedings is also considered to be a private document. Only because such affidavits are filed in the Court, it

cannot be considered as public documents, though such documents were maintained and preserved by the Court. Section 74 of the Evidence Act deals with public documents wherein it is mentioned that the documents forming the Acts or records of the Acts in connection with sovereign authority, official bodies and tribunals, public officers, Legislative, Judicial and Executives of any part of India or of a Common Land or of a Foreign Country. Similarly, public records kept in any state of private documents are to be considered as public documents.

53. Learned Revisional Court by holding that the affidavits filed by Petitioner and the Officer of PWD in writ petition no.19/2016 as public documents and allowed production of it during the revision proceedings and also heavily relied upon it, which is clearly an exercise which was not permissible at the revisional stage. First of all, these affidavits were produced in the context of writ petition filed by respondent No.2 claiming certain reliefs. This Court while disposing of the writ petition, clearly observed that there are disputed questions of facts and therefore, while dealing with a writ jurisdiction, it is not possible to give such directions. These observations of this Court were confirmed by the Apex Court while rejecting the SLP, observations of which are already

quoted above.

54. No opportunity was given to the petitioner to explain the contents of his affidavit which was filed before this Court. Simply because such documents were maintained by the Court as part of writ petition, it cannot be termed as public documents.

55. The learned Revisional Court then embarked upon an enquiry to come to the conclusion that the portion in front of the house of respondent no. 2 and passing through the property of petitioners is a public street. Infact, the Revisional Court has declared it as a public street, which is not at all permissible while dealing with the powers under Section 147 of Cr.P.C.

56. The learned Revisional Court also embarked upon an enquiry and came to the conclusion that the Chapel existing in the property of petitioner is a public Chapel. It is surprising to note that no such issues were raised before the learned Magistrate by any of the parties and such issues were discussed and decided by the learned Revisional Court without having jurisdiction to do so.

57. Once again it is necessary to remind that the proceedings under Section 145/147 Cr.P.C., are coming out of a branch of preventive jurisdiction. Such proceedings are considered as quasi

civil or quasi criminal in nature or in the form of executive action with a sole object merely to maintain law and order and to maintain breach of peace in the locality. The learned Magistrate or the Revisional Authority cannot enlarge the scope of such enquiry so as to give declaration of rights or title to a respective party.

58. The Revisional Court clearly exceeded its jurisdiction and thereafter proceeded to hold that there is a public street, public Chapel and modified the order of learned Executive Magistrate thereby directing the petitioner to maintain 3 mtrs. wide access upto the house of respondent no.2. Such directions as well as findings are nothing but deciding a clear cut right of easement in favour of the respondent no.2 and that too without such party approaching a Civil Court.

59. It has to be kept in mind that the powers under Section 145/147 of Cr.P.C. are in the nature of preventive measures and such powers or orders cannot continue forever. The preventive action is only to ease out the possibility of any breach of peace in the area so that the parties to the dispute could approach the jurisdictional Court to decide their rights. Therefore, by making such order, the learned Executive Magistrate as well as the Revisional Court clearly exceeded their jurisdiction and

accordingly, both these orders as well as directions to maintain the access, either of 1.5 mts or 3.00 mts., require interference.

60. For all the above reasons, both these petitions needs to be allowed as per prayer clause (a) and (b) which reads thus:

Writ Petition No.16/2024

(a) For a writ of Certiorari or any other appropriate writ and/or direction for quashing and/or setting aside the said Judgement and Order dated 30.06.2023 passed by the Learned Additional Sessions Judge III South Goa at Margoa-Goa in Criminal Revision Application No.1/2021.

(b) For a writ of Certiorari or any other appropriate writ and/or direction for quashing and/or setting aside the said Judgement and Order dated 16.10.2019 passed by the Learned Deputy Collector and Sub Divisional Magistrate, at Margao-Goa and the Criminal Revision Application No.1/2021 be ordered to be dismissed and /or rejected.

Writ Petition No.17/2024

(a) For a writ of Certiorari or any other appropriate writ and/or direction for quashing and/or setting aside the said Judgement and Order dated 30.06.2023 passed by the Learned Additional Sessions Judge III South Goa at Margoa-Goa in Criminal Revision

Application No.1/2020.

(b) For a writ of Certiorari or any other appropriate writ and/or direction for quashing and/or setting aside the said Judgement and Order dated 16.10.2019 passed by the Learned Deputy Collector and Sub Divisional Magistrate, at Margao-Goa and the Criminal Revision Application No.1/2020 be ordered to be dismissed and/or rejected.

61. The rule is made absolute in above terms.

62. Pending Criminal Miscellaneous Application No.2 of 2024 in Criminal Writ Petition No.16 of 2024 and Criminal Miscellaneous Application No.83 of 2023 in Criminal Writ Petition No.17 of 2024 also stands disposed of.

63. Parties shall bare their own costs.

BHARAT P. DESHPANDE, J.