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IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPLICATION (MAIN) NO 73 of 2018

ALDILA BRAGANZA.Applicant.
VS
ANTONETTO J D'SOUZA AND 6
ORS., Respondents.

Applicant present in person.
Mr J. E. Coelho Pereira, Senior Advocate with Mr Pancham Fadte,
Advocate for the respondent nos. 1 and 2.

CORAM: **BHARAT P. DESHPANDE, J.**

Reserved on : **22nd April 2024.**
Pronounced on: **9th May 2024**

ORDER :

1. Heard applicant who is appearing in person.
2. Since the present application is filed under the provisions of Section 340 of Cr.P.C. with a request to conduct an inquiry and to initiate action against respondent nos.1 and 2 for the offence punishable under Sections 193 to 196 of IPC, question of hearing of respondents would not arise. Accordingly, only the applicant was permitted to argue the matter since she is appearing in person. Even written submissions were filed by the applicant. She submits that her written submissions filed on 30.3.2024 are to be considered as her submissions.
3. In a nutshell, it is the contention of the applicant that respondent nos.1 and 2 purchased plot bearing survey nos. 163/2 and

164/1 and 12 in the year 2005. Said respondents prepared a false and fabricated documents i.e. letter dated 28.6.2006 purportedly issued by Goa Coastal Zone Management Authority (“GCZMA”) stating that plot bearing survey no. 163/2 of Calangute Village lies beyond 500 mts of high tide line and submitted such documents before the Town and Country Planning Department for the purpose of obtaining permission to construct compound wall thereby blocking traditional access available to the petitioner.

4. It is contended that such letter dated 28.6.2006 is a forged and fabricated document and even GCZMA informed that such document is not available in their record. The Director of Settlement and Land Records Panaji confirmed that plot bearing survey no. 163/2 partly falls in the zone between 200 to 500 mts of high tide line. It is further contention of the applicant that respondent nos.1 and 2 by producing such fraudulent letter dated 28.6.2006 in Special Civil Suit No.134/2007/B, managed to obtain an order in their favour and against the applicant. It is her contention that even respondent nos.1 and 2 used such averments in a Writ Petition filed before this Court bearing Writ Petition No.422 of 2008. Respondent nos.1 and 2 had full knowledge at the time of purchase of the said plot that part of the said plot lies in between 200 to 500 mts of high tide line. However, they prepared and used a fabricated document, produced it as evidence in the Court thereby obtaining orders in their favour.

Accordingly, she claimed that an inquiry is required by this Court since such fact has been used/affirmed by respondent nos. 1 and 2 in Writ Petition No.422 of 2008 and accordingly, proceeding be initiated against them as provided under Section 185 of IPC.

5. In the petition, apart from facts, applicant has disclosed from paragraph 17 onwards about the list of offences/evidence which the respondent nos.1 and 2 have used as false and fabricated evidence thereby interfering with the administration of justice.

6. The first instance wherein the petitioner claimed that respondent no.1 obtained an order from the Civil Court dated 13.2.2008 in Special Civil Suit No. 134/2007/B by playing fraud. It is her contention that applicant filed temporary injunction application before the Civil Court with a prayer that respondent nos.1 and 2 be directed to remove illegal gate/compound wall constructed on the easementary right/access passing through survey nos.163/2, 164/1 and 164/2 of village Calangute. Respondents in their written statement and reply, objected to such contention of the applicant and produced documents along with letter dated 28.6.2006 purportedly signed by the Member Secretary of GCZMA. Such letter was fabricated by the respondents and used as evidence for obtaining favourable order in their favour.

7. First of all such contention raised by the applicant is in connection with a civil suit which is pending before the Civil Court.

Admittedly, such suit is now transferred to the District Court wherein the applicant has already filed an application under Section 340 Cr.P.C. which is pending for further proceeding. Procedure provided under Section 195 of Cr.P.C. deals with contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence, which shows that no Court shall take cognizance of any offence punishable under sections 172 to 188 of the Indian Penal Code or of any abetment of, or attempt to commit, such offence, or of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate. Sub clause (b) provides that any offence punishable under sections 193 to 196, 199, 200, 205 to 211 and 228 of IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court. Thus the provision itself says that such offences are required to be allegedly committed in relation to any proceeding in a Court.

8. Admittedly, applicant claims that such offence is committed allegedly in the Civil Court when the respondent nos.1 and 2 produced fraudulent document. It is also admitted that petitioner has applied for inquiry before the Civil Court and such proceedings are pending. Thus, the question of initiating another inquiry by this Court as far as first instance is concerned, would not arise.

9. The second instance which the petitioner is claiming in paragraph 18 of the present application is that respondent no.1 obtained order dated 6.11.2009 in Special Civil Suit No. 134/2007/B by misleading the Court. Applicant claimed that in the said Special Civil Suit no.134/2007/B respondent nos.1 and 2 failed to inform the Court that the Town and Country Planning Department issued show cause notice to them and had withdrawn NOC issued in favour of respondent nos.1 and 2 regarding construction of the compound wall. Similarly respondent nos.1 and 2 failed to inform the Civil Court Mapusa that an FIR was registered against them on 21.6.2008 in connection with producing letter dated 28.6.2006 to Town and Country Planning Department.

10. All these aspects are directly connected with the civil suit. The contention of the applicant that respondent nos.1 and 2 failed to inform the civil Court certain facts which were to their knowledge, cannot be considered as subject matter of any inquiry under Section 340 of Cr.P.C or an offence under Sections 193 to 196, 199, 200, 205 to 211 and 228 of IPC. Besides, such allegations are in respect of proceeding before the Civil Court. Therefore, proper authority is civil Court to consider such request and not this Court.

11. Third instance is found in paragraph no.19 of the petition. Petitioner claimed that respondent nos.1 and 2 obtained order dated 14.7.2008 in Writ Petition No.422 of 2008 by concealing facts. It is

her contention that father-in-law of the applicant was operated for fracture of left femur and was also diagnosed with severe diabetics, hyper tension and heart disease. On 10.7.2008, health of father-in-law deteriorated and therefore, the applicant immediately made an application for ex parte ad-interim order before the Additional Collector North in a proceeding filed before it, allowing the applicant to open the gate and removing obstacles for free movement of an ambulance through the property of respondent nos.1 and 2 so that she could take her father-in-law for treatment. Such ex parte order was passed by the Additional Collector, however respondent no.1 approached this Court by filing Writ Petition No.422 of 2008 and obtained an order dated 14.7.2008 staying the order of the Additional Collector. It is contention of the applicant that respondent no.1 failed to inform this Court that neither the compound wall nor the gate that blocked the traditional access had any NOC from the concerned authorities and in fact such NOC's were withdrawn by the Town and Country Planning Department.

12. Perusal of the Writ Petition filed before this Court bearing no. 422 of 2018, copy of which is placed on record from page 131 onwards, revealed that said petition was filed challenging the orders dated 7.3.2008 and 11.7.2008 passed by the Additional Collector North Goa.

13. At that time admittedly the civil suit was pending and

directions were issued to the learned civil Court at Mapusa to decide the injunction application. Respondent nos. 1 and 2 challenged the powers of the Additional Collector under Section 4 of the Mamlatdar's Court Act. Prayer in the said petition was to grant a writ of certiorari or any appropriate Writ or direction or order quashing the impugned order dated 7.3.2008 and 11.7.2008. Respondent no.1 filed affidavit in support of such petition. However, entire petition only concerns about the orders passed by the Additional Collector.

14. Petitioner is now claiming that respondent nos.1 and 2 were duty bound to inform this Court about withdrawal of the NOC by Town and Country Planning Department in connection with construction of compound wall.

15. Said petition was disposed of by this Court vide order dated 4.5.2009 and even Misc. Civil Application No.684 of 2017 filed for recall of such order was rejected.

16. However, fact remains that only because respondent nos.1 and 2 did not disclose in their writ petition that NOC for the construction of the compound wall was withdrawn by the Town and Country Planning Department would not attract the provisions as tried to be projected for the purpose of conducting inquiry under Section 340 of Cr.P.C.

17. The fourth contention which is found in paragraph no.20 of the petition is again order passed on 4.5.2009 in Writ Petition No. 422 of

2008, allegedly by deception by respondent no.1. It is her contention that respondent nos. 1 and 2 produced photographs depicting alternative access for the applicant wherein alternative access is shown. It is her contention that she was not served in Writ Petition No.422 of 2008 nor she engaged any advocate. Respondent no.1 with intend to mislead this Court made some statement even though they were fully aware that NOC for constructions of the compound wall was already withdrawn and that question of alternative access is only an eyewash.

18. Record clearly goes to show that Writ Petition was taken up before this Court along with Appeal from Order No. 59 of 2008. An order was passed on 4.5.2009 wherein learned Advocate appearing for respondent nos. 1 and 2 in Appeal from Order No.59 of 2008 prayed for withdrawal of said appeal. Similarly, Advocate appearing for respondent no.3/present petitioner made a statement that present petitioner undertakes to withdraw the application filed before the Mamlatdar's Court. Accordingly, Writ Petition No.422 of 2008 was disposed of whereas Appeal from Order No. 59 f 2008 is allowed to be withdrawn.

19. Petitioner then filed Misc. Civil Application No. 684 of 2017 in Writ Petition No. 422 of 2008 on 22.6.2018 seeking recall of order dated 4.5.2009. By a detailed order dated 27.3.2018, learned Single Judge of this Court dismissed the said Misc. Civil Application No. 684

of 2017 with exemplary costs. Thus, the contention of the present petitioner that an order obtained by respondent nos.1 and 2 in Writ Petition No.422 of 2008 by misleading the Court, was already considered in the said Misc. Civil Application. Even otherwise, such contention cannot be a matter of conducting inquiry under Section 340 of Cr.P.C. and that too before this Court.

20. Record clearly goes to show that petitioner has already initiated proceeding under Section 340 of Cr.P.C. before the learned District Judge with regard to same letter dated 28.6.2006 allegedly issued by Member secretary of GCZMA and produced by the respondents before the Town and Country Planning Department. Accordingly, present proceedings cannot be entertained in this Court for the reasons disclosed above.

21. Criminal Application (Main) stands rejected.

BHARAT P. DESHPANDE, J.