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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 37 OF 2024

Ms. Ashwini Agni, Aged 43 years, Advocate, r/o House No. 153/5, Panaji, Goa. ... PETITIONER

Versus

1. Mr. Kassim Jamuluddin Shaikh, major, R/o Mumbai, 226/102, Bapat Building, 1st Floor, Brahman Wadi, MP Marg, Kurla-West, Mumbai, Maharashtra 400 070.
2. Gulshan Kassim Shaikh,
3. Abrar Mansuri,
4. Shabana Mansuri,
5. Mrs. Khairunissa Mansuri,
6. Imran Mansuri,

   All r/o C-301, 3rd Floor, Estrella by Alcon, Near Royal Enfield Service Centre, St. Inez, Tonca, Panaji–Goa 403 004.

   (The Respondent nos. 2 to 6 are proforma Respondents.)

7. [Metropolitan Magistrate 51st Court of Kurla, Mumbai, Maharashtra]. } *Deleted in terms of order dated 26.09.2023*
8. PI, Kurla Police Station, Mumbai, Maharashtra.
9. State of Goa, Through Public Prosecutor. ... RESPONDENTS

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Mr. A.F. Diniz, Senior Advocate with Mr. Junaid Shaikh, Advocate for the Petitioner.

Mr. Kassim Shaikh, Respondent No. 1 in person.

Mr. Nikhil Vaze, Additional Public Prosecutor for Respondent Nos. 8 and 9.

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

RESERVED ON: **10th SEPTEMBER 2024**

PRONOUNCED ON: **18th SEPTEMBER 2024**

JUDGMENT:

1. Rule. Rule made returnable forthwith.

2. The matter is taken up for final disposal with consent of the parties.

3. Heard the learned Senior Counsel Mr. Diniz appearing with Mr. Junaid Shaikh for the Petitioner and Respondent No. 1 appearing in person.

4. The Petition is filed with the following prayers:

> *a) For a writ of certiorari or a writ in the nature of certiorari, any other writ, direction or order, order under Section 482 of the Criminal Procedure Code thereby bearing Case No. MISC/2994/22 quashing and setting aside the Order dated 16/06/2023 and the application/ complaint under Section 156(3) complaint bearing Case No. MISC/2994/22 filed before the Metropolitan Magistrate Kurla with proceedings initiated thereby,*

insofar as the Petitioner in concerned.

b) *Pending the hearing and final disposal of the Petition the operation and execution of the order dated 16/6/2023 and proceedings under Section 156(3) insofar as the Petitioner is concerned be stayed.*

c) *Ex parte ad interim relief in terms of prayer clause b.*

d) *Any other relief order as this Hon'ble Court deems fit and proper.*

5. The Petitioner who is a practising Advocate challenges the order dated 16.06.2023 passed by the learned Metropolitan Magistrate at Kurla, Mumbai in Case No. MISC/2994/2022, thereby directing the Police Officer of the Kurla Police Station to conduct an investigation under Section 202 of Cr.P.C. and to submit the report within four months. The impugned order was passed by the Magistrate at Kurla on a complaint filed by Respondent No. 1 against seven persons including the present Petitioner for the offence punishable under Sections 120A, 120B, 182, 211, 406, 383, 384, 499 and 506 read with Section 34 of the IPC.

6. Initially, Respondent No. 1 filed a complaint with Kurla Police Station, however, since no cognizance was taken of such complaint, he approached the Metropolitan Magistrate at Kurla by

filing an Application under Section 156(3) of the Code of Criminal Procedure. However, by a pursis, Respondent No. 1 requested the concerned Magistrate to consider his Application under Section 156(3) of Cr.P.C. as a complaint filed under Section 190 of Cr.P.C.

7. The record shows that the said complaint was registered and kept for verification. On 02.05.2023, the Complainant filed an affidavit in lieu of verification of the complaint and then, the case was registered. Finally, on 16.06.2023, the learned Metropolitan Magistrate passed an order on the said complaint as under:-

> *"Order - Police Officer Kurla Police Station is hereby directed to conduct investigation u/s 202 Cr.P.C. and submit report within 04 months.*
>
> *Adj. for u/s 202 report."*

8. The Petitioner approached this Court since she received a notice dated 15.09.2023 from the P.I. Kurla Police Station under Section 160 of Cr.P.C. thereby directing her to report to the concerned Police Station for the purpose of inquiry.

9. Mr. Diniz would submit that the Petitioner, who is an Advocate, appearing for and on behalf of the wife of Respondent No. 1 in the matrimonial matter, had no connection at all with the alleged act of extortion as claimed in the complaint. He submits

that there are no allegations against the present Petitioner in the complaint filed before the Kurla Police Station while the Petitioner was acting as an Advocate of Respondent No. 2 i.e. the wife of Respondent No. 1.

10. Mr. Diniz would submit that the name of the Petitioner appears only when Respondent No. 1 filed a complaint/application under Section 156(3) of the Cr.P.C. He submits that the impugned order is illegal and not tenable since it contravenes the provisions of Section 202(1)(b) of the Cr.P.C. as the learned Magistrate failed to record the statement of the Complainant and his witnesses. He would further submit that on this count alone, the direction to conduct inquiry is bad in law.

11. Mr. Diniz would further submit that the Magistrate at Kurla had no territorial jurisdiction to entertain such a complaint as the entire cause of action as alleged in the complaint took place in Goa. He would submit that no part of the cause of action accrued in Mumbai or within the jurisdiction of Kurla Police Station so as to entertain such a complaint.

12. Mr. Diniz while submitting that this Court has jurisdiction, claimed that the High Court of Bombay at Goa is a common High

Court for Maharashtra and Goa and therefore, this Court sitting at Goa has jurisdiction to entertain the Writ Petition and more specifically, under Article 226 of the Constitution of India so as to consider the grievance raised by the Petitioner. Finally, he claimed that the complaint filed before the Kurla Court is an abuse of the process of the Court and law and therefore, it needs to be quashed and set aside with exemplary costs.

13. Mr. Diniz placed reliance on the following decisions:

(i) A.M. Mohan Vs. The State, 2024 SCC OnLine 339;

(ii) Prakash Ujjalappa Bhogje Vs. State of Maharashtra & Another, 2007 (Supp.) Bom. C.R. 172;

(iii) Mohamed Rizwan Memon & Others Vs. State of Goa & Others, 2017 DGLS (Bom) 1117;

(iv) S.V. Puranik Vs. Indian Airlines & Others, 1991(1) Goa L.T. 218;

(v) Rahul Sanjay Shingade Vs. State of Maharashtra, 2024 DGLS (Bom) 1577;

(vi) Mohd. Nawaz Iqbal Shaikh Vs. State of Maharashtra & Another, MANU/MH/ 1451/2023

14. Per contra, Respondent No. 1 appearing in person would submit that the cause of action for filing of the Petition entirely arose within the territorial jurisdiction of the Principal seat at

Bombay and thus, this Court sitting at Goa has no jurisdiction to entertain such Writ Petition. He submits that the Petitioner ought to have filed the Petition, if so desired before the Principal seat. He would further submit that the present Petition is not at all maintainable as there is no cause of action for the Petitioner to approach this Court and more so, against the order directing the inquiry to be conducted under Section 202 of Cr.P.C.

15. Besides, Respondent No. 1 would submit that the Petitioner though acting as an Advocate, was clearly involved in instigating Respondent No. 2 i.e. the wife of Respondent No. 1 in order to extract an amount of Rs.25,00,000/-. Respondent No. 1 would further submit that the Petitioner was also involved in directly contacting Respondent No. 1 and threatening him whenever he visited Goa and the same was also recorded on the phone.

16. Respondent No. 1 would further submit that part of the offences alleged in the complaint took place in Mumbai, wherein Respondent No. 1 is permanently residing. He submits that even Respondent No. 2 was residing with him in Mumbai prior to shifting to Goa.

17. Respondent No. 1 would then submit that the Kurla Police after conducting the inquiry, submitted its report to the concerned

Magistrate, however, since stay has been granted by this Court, the matter is pending for further consideration. Respondent No. 1 would submit that the judgments cited by Mr. Diniz are not applicable and distinguishable.

18. The rival contentions fall for determination.

19. The first contention of Mr. Diniz is regarding non-compliance with Section 202 of Cr.P.C. In this respect, he would submit that the impugned order passed by the Magistrate directing the Kurla Police Station to conduct an investigation is bad in law. He relied upon the provisions of Section 202(1)(b) of Cr.P.C. Thus, it is the contention of Mr. Diniz that the Court/ Magistrate is duty bound to examine on oath the Complainant and the witnesses present, if any, before postponing the issue of process and directing the Police Officer to conduct the investigation. However, as rightly pointed out by Respondent No. 1 from the Roznama itself, it is clear that on 02.05.2023, the Complainant/Respondent No. 1 filed an affidavit in lieu of verification of the complaint. The same is kept on record and marked as Exhibit-3. Thus, after considering the affidavit in lieu of verification of the complaint, the learned Magistrate complied with the provisions of Section 202(1)(b) of Cr.P.C.

20. Similarly, the concerned Magistrate was right in directing the inquiry/investigation by the concerned Police Officer instead of conducting the inquiry himself since some of the Accused persons mentioned therein are residing beyond the territorial jurisdiction of the said Magistrate.

21. The complaint was filed under Section 190 of Cr.P.C., though, initially, it was titled as an application under Section 156(3) of the Cr.P.C. Once such a complaint is received by the Magistrate, he has to proceed under Chapter XV of Cr.P.C., which deals with complaints to the Magistrates and starts with Section 200 of the Cr.P.C. For a better understanding of the provisions, Section 202 of Cr.P.C. is quoted as follows:

> *"202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

22. The plain reading of sub-section (1) would go to show that the Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, may, if he thinks fit and shall, in a case where the accused is residing at a place beyond the area in

which he exercises his jurisdiction, postpone the issue of process against the Accused, and either inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

23. Thus, two things the Magistrate has to comply with on receipt of a complaint. Firstly, he has to verify whether the complaint is with regard to the offence of which he is authorised to take cognizance and secondly, whether the Accused is residing within his jurisdiction. While postponing such process, he has to examine the Complainant and the witnesses present, if any, on oath under Section 200 of Cr.P.C.

24. The purpose of conducting an inquiry by the Magistrate himself or directing an investigation to be made by a Police Officer is only for the purpose of deciding whether or not, there is sufficient ground for proceeding. The word "proceeding" used therein is to be considered as issuance of process or dismissal of the complaint as found in Sections 203 and 204 of Cr.P.C.

25. The inquiry/investigation as provided under Section 202(1) of Cr.P.C. is, therefore, only for the purpose of deciding whether or

not, there is sufficient ground to proceed. Thus, Section 203 of Cr.P.C. gives power to the Magistrate after taking the statement on oath, if any, of the Complainant as well as witnesses, if any or the result of the inquiry/investigation under Section 202, enables the Magistrate to form an opinion as to whether there is a ground to proceed, else, he must dismiss the complaint by recording brief reasons. Only if the Magistrate is satisfied upon such inquiry or investigation that there is sufficient ground for proceeding, he may issue process against the Accused mentioned in the complaint i.e. against the Accused or against some of them under Section 204 of Cr.P.C. The matter in hand is only at the stage of conducting the investigation by the Police Officer as directed by the Magistrate under Section 202(1) of Cr.P.C. Thus, the stage of either Section 203 or 204 of Cr.P.C. is yet to arrive.

26. The question, therefore, before this Court is whether there is any cause of action for the Petitioner to approach this Court against the order dated 16.06.2023 passed by the concerned Magistrate thereby directing an investigation by the Kurla Police Station. At this stage, though the present Petitioner is arrayed as an Accused in a private complaint under Section 190 of Cr.P.C., the learned Magistrate is yet to come to a conclusion/opinion that there is any sufficient ground to proceed with the said complaint.

This means that the Petitioner though arrayed as an Accused in the complaint, is not treated as Accused by the Magistrate. Only after issuance of process, that too on the satisfaction of the inquiry/investigation conducted under Section 202(1) of Cr.P.C, the Magistrate has to form an opinion and only then, the party arrayed in the said complaint could be named as an Accused.

27. The role of the present Petitioner in the said complaint, at this stage, is simply as a Respondent therein, though arrayed as one of the Accused. Unless the Court forms an opinion that there is some ground to proceed under Section 204 of Cr.P.C., it cannot give any cause of action for the Petitioner to approach the Court by challenging the order under Section 202(1) of Cr.P.C. It is only for the Magistrate to satisfy himself. Even the Magistrate himself can conduct the inquiry or he may direct the Police Officer to investigate or submit the report. Thus, in sum and substance, there is no opinion or observation of the learned Magistrate disclosing his mind to take cognizance of such a complaint for the purpose of issuing process.

28. It is no doubt true that the Accused is entitled to challenge the order of issuance of process for the simple reason that by doing so, the observations of the Magistrate could be challenged in

connection with Section 204 of Cr.P.C. However, the matter has not reached the stage of Section 204 of Cr.P.C. and it is only at the stage of investigation under Section 202 (1) of Cr.P.C. It may happen that after the report of the investigation is placed before the Magistrate, he may dismiss the complaint under Section 203 of Cr.P.C. If so, in such circumstances, challenging the order dated 16.06.2023, to my mind would be premature and for that purpose, the Petitioner will not have any specific cause of action.

29. Mr. Diniz would submit that the Petitioner has received a notice under Section 160 of Cr.P.C. from the concerned Police Officer of Kurla Police Station directing her to remain present before the said Officer, which according to Mr. Diniz clearly gives the cause of action to the Petitioner to challenge the impugned order dated 16.06.2023. A perusal of the notice dated 15.09.2023 issued to the Petitioner by Kurla Police Station, clearly shows that it is issued under Section 160 of Cr.P.C.

30. Section 160 of Cr.P.C. reads thus:

> *"160. Police officer's power to require attendance of witnesses.— (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or*

otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

31. A careful reading of the above provision would go to show that it appears under Chapter XII, which deals with information to the Police and their powers to investigate. It further provides that the Police Officer has powers to investigate a cognizable case under Section 156 of Cr.P.C. and also on directions of the Magistrate under Section 190 of Cr.P.C.

32. However, Section 160 would clearly reveal the power of the Police Officer to require the attendance of witnesses. A Police Officer making an investigation may by an order in writing require attendance before himself or any person appears to be acquainted

with the facts and circumstances of the case and such person shall attend as so required. It follows with a recording of statements of the witnesses under Section 161 of Cr.P.C. Thus, the notice issued to the Petitioner by the Kurla Police Station is basically under Section 160 of Cr.P.C. which cannot be construed as giving cause of action to the Petitioner to challenge the impugned order dated 16.06.2023. This notice is issued only to carry out the investigation as directed by the Magistrate and to submit a report before it. A person receiving such notice is bound to appear before the Police Officer and if questioned, is bound to answer truly relating to such a case, other than questions, the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. Thus, the title of Section 160 of Cr.P.C. would clearly go to show that it is a notice requiring the attendance of a witness. It is no doubt true that the Petitioner is arrayed in the complaint as Accused No. 7, however, it is also necessary to consider that the inquiry or investigation might reveal that the Petitioner is not an Accused, but needs to be considered as a witness.

33. In the above circumstances, the Petition filed thereby challenging the order dated 16.06.2023 is itself misconceived. The Petitioner has prayed for the issuance of a writ of certiorari or any other writ or direction or order under Section 482 of Cr.P.C. for

quashing the complaint filed by Respondent No. 1 before the Magistrate at Kurla. At this stage, it is necessary to note that the Magistrate has directed only to conduct the investigation under Section 202 of Cr.P.C. and has not reached the stage of Section 203 or 204 of Cr.P.C. It is possible that after the report is received from the Kurla Police Station, the Magistrate might form an opinion that no case is made out for issuance of process and accordingly, may dismiss the complaint under Section 203 of Cr.P.C.

34. Besides, the contentions raised by the Petitioner that the complaint filed before the Magistrate at Kurla has no territorial jurisdiction, cannot be looked into at this stage, since the Magistrate is yet to arrive at such conclusions. The process is not issued against the Petitioner. The stage is only at the investigation level under Section 202 of Cr.P.C. Thus, the status of the Petitioner in the said complaint cannot be equated to that of an Accused. At this stage, the status of the Petitioner in the said complaint is that of non-applicant/Respondent. If the Magistrate considers that there is sufficient material to proceed under Section 204 of Cr.P.C., the Petitioner would get the cause of action to challenge such order along with the complaint even under Section 482 of Cr.P.C., but not prior to it.

35. The powers under Article 226 of the Constitution of India as well as Section 482 of Cr.P.C. are extraordinary powers. The Court while using such powers must remind itself that it should be used only when it is necessary to set the record right and to remind the concerned Authority about their duty. At present, the Petitioner is only apprehending that the process could be issued against her by the concerned Magistrate. Such apprehension cannot lead to seeking a writ of certiorari or in the like nature and also seeking the exercise of extraordinary jurisdiction of this Court under Section 482 of Cr.P.C.

36. The contention of Mr. Diniz that the complaint filed before the Magistrate entirely speaks about the incident that took place in Goa and not in Mumbai would be available to the Petitioner only if the Magistrate comes to the conclusion that he is authorized to take cognizance of the said complaint, but not prior to it. Similarly, the Magistrate before issuing the process under Section 204 of Cr.P.C. is duty bound to consider the contentions raised in the complaint including the question of territorial jurisdiction and only thereafter proceed further. The matter in hand has not reached such a stage. Though the Magistrate directed postponement of the issuance of process, it is only against some of the non-applicants/Accused persons mentioned in the complaint

that are residing at a place beyond the area in which he exercises his jurisdiction. Thus, while passing the order dated 16.06.2023, the Magistrate is fully aware that he has to even conduct the inquiry or direct investigation by a Police Officer for deciding whether or not, there is sufficient ground for proceeding.

37. It further shows that the Magistrate is also aware that while considering the investigation report, he has to satisfy himself whether there is sufficient ground to proceed which also includes the question of territorial jurisdiction of the concerned Magistrate to issue the process.

38. Respondent No. 1 disclosed that the Kurla Police Station has already submitted its report of the investigation before the concerned Magistrate on 03.10.2023. A copy of this report is placed on record. Thus, it is now for the concerned Magistrate to form his opinion and decide whether or not, there is sufficient ground to proceed. The option under Section 203 of Cr.P.C is also available with the concerned Magistrate. Thus, it would be premature to entertain the present Petition at this stage, specifically when no opinion is formed by the learned Magistrate either under Section 203 of Cr.P.C. or 204 of Cr.P.C.

39. Having said so, the other ground regarding the jurisdiction of this Court to entertain the Petition on merits, need not be gone into as it is clearly observed that the Petition itself is premature and need not be considered at this stage. Thus, the decisions cited by Mr. Diniz with regard to the jurisdiction of this Court to entertain the Petition could be considered in appropriate matters.

40. For all the above reasons, the Petition fails and stands rejected.

BHARAT P. DESHPANDE, J.