
(2018) 07 BOM CK 0148

In the Bombay High Court

Case No : Criminal Application (Main) No.162 Of 2018

Mr. Romit Nasnodkar

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Indian Penal Code, 1860 — Sectin 279, 339, 341, 350, 353

Citation : (2018) 07 BOM CK 0148

Hon'ble Judges : C. V. Bhadang, J

Bench : Single Bench

Advocate : R. Menezes, S. R. Rivankar

Final Decision : Partly Allowed

Judgement

1. Rule, made returnable forthwith.Â The learned Public Prosecutor waives service.Â Heard finally by consent of parties.

2. The challenge in this petition is to the order of issuance of process, passed by the learned Magistrate for the offences punishable under Sections

279, 341 and 353 of Indian Penal Code (IPC).Â That order has been confirmed by the learned Sessions Judge in Revision Application.

3. The brief facts are that on 30/10/2016, the Dy. C.M. of this State, had gone to watch ISL Football match at Fatorda at Margao.Â The match got

over at about 21.00 hours and the Dy. C.M. left for his residence at Mapusa.Â The vehicle of the Dy. C.M. was escorted by a vehicle bearing

No.GA07-G-0519.Â It is stated that at about 23.05 hours, when the carcase of the Dy.C.M. Reached at Aggasaim, the petitioner, who was driving a

vehicle bearing no.GA03-C-3557 overtook the carcase in a rash and negligent manner and started blocking the vehicle of Dy.C.M. from going

ahead.Â The complainant ASI Dashrath Parab states that they rang siren to give

way to carcase on several times and in spite of that, the petitioner continued to block the Car case. When the carcase had reached near Hira Petrol Pump, Panaji at 23.30 hours, they overtook the vehicle of the petitioner, blocked his way and a call was given to PCR, Panaji, informing about the incident. After some time, police staff of the Panaji police station approached the spot. The petitioner was detained and after investigation, chargesheet came to be filed against the petitioner for the aforesaid offences. The learned Magistrate, by the following order dated 04/10/2017, issued process against the petitioner for the offences under Sections 279, 341 and 353 of IPC, which reads thus :

Upon hearing the parties and on perusal of the records, there is sufficient material to proceed against accused u/s 279, 341, 353 of IPC.

Hence charge is to be framed.

Matter adjourned for charge on 17/11/17 2.30 p.m.

Feeling aggrieved, the petitioner challenged the same before the learned Sessions Judge in Criminal Revision Application No.111/2017. The learned

Sessions Judge has dismissed the Revision Application on 23/04/2018 by observing that the case before the Magistrate being a summons trial case,

only particulars are to be explained and no formal charge need be framed in the case. A perusal of the judgment of the Sessions Judge shows that

the learned Sessions Judge has not gone into the ingredients of the individual offences, under which the process is issued.

4. I have heard Shri Menezes, the learned Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent. With the

assistance for the learned Counsel for the parties, I have gone through the complaint and the impugned orders passed.

5. Shri Menezes, the learned Counsel for the petitioner, on instructions, submitted that the petitioner restricts his challenge in so far as issuance of

process under Section 341 and 353 of IPC.

6. It does appear that the ingredients of the offences under Sections 341 and 353 of IPC cannot be said to be made out in this case. Section 353 of

IPC speaks about the assault or criminal force to deter the public servant from discharging his duties. Even going by the complaint and the contents of

the chargesheet, it is not the case that there was an assault on any public servant. In so far as criminal force is concerned, the same is defined

under Section 350 of IPC, which provides that whoever intentionally uses force to any person without that person's consent, in order to committing any offence or intending by the use of such force to cause or knowing it to be likely that by the use of such force, he will cause injury, fear and annoyance to person to whom the force is used, is said to use criminal force to that other. Even going by the complaint and the contents of the chargesheet and taking them for the face value, it cannot be accepted that there is any use of criminal force as such. Thus, there is no prima facie case for issuance of process in so far as offence under Section 353 is concerned.

7. Coming to the offence under Section 341 of IPC, it provides for punishment for Wrongful Restraint, which is defined under Section 339 of IPC.

Under Section 339 of IPC, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to wrongfully restrain that person.

8. The learned Public Prosecutor, in all fairness, did not dispute that there was no wrongful restraint as such, in as much as all the vehicles continued to proceed towards Panaji. It can, thus clearly, be seen that the ingredients of offence under Section 341 of IPC are also not made out in this case.

9. In the result, the following order is passed :

(i) Criminal Application (Main) No.162/2018 is partly allowed.

(ii) The impugned order to the extent issuing process under Sections 341 and 353 of IPC is hereby set aside.

(iii) Needless to mention that the Criminal Case shall proceed in so far as the offence under Section 279 of IPC is concerned.

(iv) Rule is partly made absolute in the aforesaid terms.