
(2016) 02 BOM CK 0201

In the Bombay High Court

Case No : Criminal Writ Petition No. 13 of 2016

Pradeep Ramchandra Velip

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2016) ALLMRCri 4494

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Mr. Ryan Da Piedade Menezes, Advocate, for the Petitioners; Mr. M. Amonkar, A.P.P, for the Respondent Nos. 1 and 3

Final Decision : Disposed Off

Judgement

K.L. Wadane, J.—The petitioner has challenged the orders passed by the Judicial Magistrate First Class, "D" Court Margao Goa in Criminal Misc. Application No. 990/2012 dated 9th July, 2013 and the order passed in Criminal Revision Application No. 80/2013 by the Additional Sessions Judge, South Goa, Margao dated 15.4.2015.

2. Heard Mr. Ryan DA Piedade Menezes, learned Advocate appearing for the petitioner and Mr. M. Amonkar, learned Public Prosecutor appearing for the respondent Nos. 1 and 3.

3. Rule. Rule returnable forthwith. Heard by consent of learned Advocates appearing for the parties. Mr. Amonkar, the learned Public Prosecutor waives notice on behalf of the respondent Nos. 1 and 3.

4. The brief facts may be stated as follows:-

The respondent No. 2 filed First Information report dated 4th December, 2012 against the present petitioner and other 12 police personnel with the allegations that they abused the respondent No. 2 with the bad words wrongfully confined

him and had restrained and also assaulted him. Since, no cognizance was taken of the said complaint, he was forced to file a second complaint under Section 152 of the Code of Criminal Procedure to the Superintendent of Police. No action was taken on the said complaint. Since, no cognizance of the complaint lodged by the respondent No. 2 was taken, he approached to the Magistrate for direction to the Police to investigate the complaint which is lodged for offence punishable under Sections 341, 506, 337, 182 and 211 read with Section 34 of the Indian Penal Code. The respondent No. 2 alleged that the contents of the complaint discloses the cognisable offence. Therefore, the police are bound to take the cognizance. The learned Magistrate by the impugned order directed the P.I. of Maina Curtorim Police Station to register the complaint and investigate the same as per law and to submit the report.

5. Aggrieved by the order passed by the learned Judicial Magistrate, present petitioner filed Criminal Revision Application No. 80/2013 before the Additional Sessions Judge, South Goa Margao and by the order dated 15th April, 2015 the learned Additional Sessions Judge dismissed the revision petition holding that the same is not maintainable. It is observed by the learned Additional Sessions Judge, as follows:-

"That it is the settled law that the order made under Section 156(3) is an interlocutory order. The position cannot be different in case of an order made under Section 155(2) of Cr.P.C. and the order directing the registration of the F.I.R. and consequent investigation therefore will also be an interlocutory order".

6. During the course of the arguments, Mr. Ryan, learned Advocate appearing for the petitioner has pointed out that the Division Bench of this Court in the judgment dated 21st October, 2015 passed in Criminal Writ Petition No. 159/2014 in case of Avinash Trimbakrao Dondage v. State of Maharashtra and another while examining as to whether a revision would lie challenging the order under Section 156(3) of the Criminal Procedure Code, has taken a view that such revision is maintainable as such the order is not interlocutory order. Mr. Ryan, learned counsel further points out that the learned Additional Sessions Judge has wrongly held that order directing the investigation under Section 156(2) is an interlocutory order, which is incorrect.

7. Considering the aforesaid judgment passed by the Division Bench of this Court in case of Avinash Trimbakrao Dhondage v. State of Mah. and another (supra), we find that the order passed by the learned Additional Sessions Judge is incorrect, and therefore, it needs to be quashed and set aside. Accordingly, we allow the writ petition and the judgment and order passed by the learned Sessions Judge in Criminal Revision Application No. 80/2013 dated 15/4/2015 is quashed and set aside. The matter is remanded to the Additional Sessions Judge to decide the revision on its own merit after giving opportunity of being heard of both sides in accordance with law. All the contentions of rival parties are kept open. The parties are directed to appear before the learned Additional Sessions Judge on 15th March, 2016 at 11.00 a.m.

8. Mr. Amonkar, learned APP appearing for the respondent Nos. 1 and 3 makes a statement that the order of the learned Magistrate passed in Misc. Criminal Application will not implemented till the decision of the revision.

9. In view of the above, we dispose of the writ petition accordingly.