



Presented on :06.10.2022

Registered on :07.10.2022

Decided on :17.04.2023

Duration : Year Months Days
00 06 11

**IN THE COURT OF THE ADDITIONAL SESSIONS
JUDGE, (FTC-1) AT PANAJI**

(Before Shri. Cholu M. Gauns, Additional Sessions Judge,
(FTC-1) at Panaji)

CNR No. GANGo10018792022

Criminal Revision Application no.75/2022

Mr. Jones Fernandes,
Aged 70 years,
son of P. Damaciano,
retired, Indian National,
r/o Flat no.S/8,
Excel Residency Co-operative
Housing Society Ltd.,
Ilhas, Goa India.

... Petitioner

V/s

1. The Inspector in charge
Panaji Police Station,
Panaji-Goa.

.... Respondents

Petitioner represented by Ld. Advocate Shri. J. A. Lobo.

State represented by Ld. P.P. Shri Rajaram Desai.

ORDER

(Delivered on this the 17th day of the month of April, of the
year, 2023)

This is a Revision filed against order dated
26.08.2022 passed by Ld. Judicial Magistrate First Class,
Panaji in Criminal Case no.Cr.M.A/222/2020/F.

2. Heard arguments. Ld. Advocate Shri J. A. Lobo
argued on behalf of the petitioner. Ld. P.P. Shri R. Desai
argued on behalf of the State.

3. The short point that arises for my determination is:
Whether the impugned order suffers from illegality?

Ans:-Yes.

REASONS

4. The present revision is filed under section 397 of Criminal Procedure Code. The records and proceedings of the trial court were called, for the purpose of satisfying on to correctness, legality or propriety of the order dated 26.08.2022, whereby learned Judicial Magistrate First dismissed the applicant's application under section 156(3) of Cr.P.C.

5. Ld. Judicial Magistrate First Class found the complainant did not produce or relied upon application moved by both suspect to the City Corporation of Panaji on 17.01.2017 with entry no.12554, without any authority given by the Society to act on its behalf, thereby swearing an affidavit stating that said Mrs. Maya Joshi have no ownership right. Moreover, letter dated 09.11.2020, which is addressed to Member Secretary of North Goa Planning and Development Authority (NGPDA), Panaji Goa by Mrs

Maya Joshi appears to be in personal capacity as same is
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addressed to the said authority in her own name therefore, the complainant has failed to show that ex facie there is a scope for conducting further investigation under section 156(3) of Cr.P.C. Hence, the Ld. J.M.F.C dismissed the petitioner's application under section 156(3) Cr.P.C.

6. Under section 154 of Cr.P.C, entering substance of any information relating to commission of cognizable offence in a book to be kept by the in charge of the police is called registration of FIR. When FIR is registered any officer in charge of police station is duty bound to investigate the cognizable case without order of the Magistrate as per sub section 1 of Section 156 of Cr.P.C. Further under sub section 3 of Section 156 of Cr.P.C any Magistrate may order such investigation in sub section 1 of section 156 of Cr.P.C and the sole criterion for officer in charge of the police station or Ld. J.M.F.C. to order investigation is to see if the information given under section 154 of Cr.P.C relates to cognizable offence.

7. The complainant filed the complaint to the in-charge of the police station dated 17.09.2020. In this complaint, it is stated that: -

1. Mrs Maya Joshi and Smitha Kakodkar had committed fraud and misrepresentation for grant of permission for building and installation of lift in the building Excel Residency Co-operative Housing Society Ltd., Caranzalem Goa. The said persons without any authority from Society acted on their own, misrepresenting themselves as the Managing Committee or persons authorised to act on behalf of Society, when the building and land belongs to the Society, misrepresented themselves to be owners and made application to the NGPDA dated 28.05.2016 seeking development permission for the construction of lift in building A. It is further stated that the said two persons without any authority from Society misrepresented themselves as owners, signed applications, sworn affidavits and signed all the

necessary documents which have been fraudulently created and made applications to NGPDA, Panaji dated 28.05.2016 seeking development permission for construction of lift in the building.

2. There is a letter dated 28.05.2016 made in the name/from the Excel Residency Co-operative Housing Society Ltd., to the Member Secretary, Planning and Development Authority, Panaji Goa for the proposed revision to the existing residential /commercial building. In part (c) of this application Mrs. Maya Joshi signed her signature above “owner’s signature” which place is for signature of “*the Excel Residency Co-operative Housing Society Ltd.*”

8. The owner of the building is the Society. Mrs. Maya Joshi is not claiming to be owner nor is she claiming to be a member of the Managing Committee. The act of Mrs. Maya Joshi in signing part (c) of the application in place of signature of the Excel Residency Co-operative Housing

Society Ltd., amounts to impersonation, which is cognizable offence.

9. There is an affidavit sworn by Mrs. Maya Joshi of which para's 1 and 2 are relevant. She stated *“(1) That I am the owner of the property bearing Chalta no.32 of P.T. Sheet no. 143, situated at Panaji, Tiswadi-Taluka-Goa; (2) that I intend to apply for development in respect of the said property.”*

10. It can be seen from above; in her affidavit she is claiming to be owner of Chalta no.32 of P.T. Sheet no. 143 when she is not the owner of the same. This affidavit is a part of the record and found mentioned in the complaint. This information contained in the complaint discloses forgery as defined under section 463 and punishable under section 465 of IPC and as said affidavit was used for developing permission the information contained in the complaint would also disclose offence under section 471 of

IPC which is a cognizable offence.

11. In case **Lalita Kumari V/s State of UP and others dated 12.11.2013** Constitutional bench of Supreme Court in para 33 held “33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.” “The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such information disclosing cognizable offence.”

12. Further in para 111 of the judgment Apex court

issued directions out of which direction i) and iv) are relevant:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

13. The affidavit and the complaint discussed herein above contain clear information of cognizable offences. Being so as directed by Constitutional bench of Apex Court Police had no option than to register FIR. The Ld. JMFC did not consider the information contained in the complaint and Affidavit nor direction in the above judgment and thereby committed illegality/irregularity in rejecting application under section 156(3) of Cr.P.C. In view of above, my answer to the point for determination is in affirmative and following:

ORDER

The Impugned Order dated 26.08.2022 passed by JMFC, 'F' Court, Panaji, is quashed and set aside.

The Investigating Officer is directed to register FIR based on the complaint dated 17.09.2020 and other documents.

Proceedings closed.

Pronounced in the Open Court.

(**Cholu Gauns**)
Additional Sessions Judge (FTC-1)
Panaji Goa

Panaji.
Dated :17.04.2023
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