

2023 SCC OnLine Bom 1978

In the High Court of Bombay at Goa
(BEFORE PRAKASH D. NAIK, J.)

Manjunath K. Mudyar ... Petitioner;

Versus

Mary Noronha and Others ... Respondent.

Criminal Miscellaneous Application No. 122 of 2023(Filing) and
Criminal Appeal No. 121 of 2023(Filing)

Decided on September 14, 2023

Advocates who appeared in this case:

Mr. Rohan Desai, Advocate with Mr. A. Naik, Advocate for the applicant.

Mr. Kishan Kavlekar, Advocate for the Respondents.

The Order of the Court was delivered by

PRAKASH D. NAIK, J.:— Heard both sides. Leave granted. Appeal is heard for final disposal.

2. The applicant/appellant is the original complainant in a private complaint filed before the Court of learned JMFC, Margao which was numbered as Private Criminal Case No. 149/P/19/I. The complaint was filed for offence under Section 143, 147, 427, 447, 504, 506(ii) read with 149 of Penal Code, 1860. The respondents were impleaded as accused. Process was issued vide order dated 12.02.2020 for offences under Section 143, 147, 427, 447, 504, 506(ii) read with 149 of IPC.

3. The applicant/appellant is aggrieved by order dated 12.01.2023 passed by the learned Magistrate observing that there is no *prima facie* material to frame charge against the accused for offences under Section 143, 147, 427, 447, 504, 506(ii) read with 149 of IPC and that the accused have been acquitted.

4. Learned advocate Mr. Desai submitted that the impugned order is contrary to provisions of law primarily on the ground that applicant/complainant was absent on few occasions. The learned Magistrate ought not to have acquitted the accused. The impugned order indicates that the learned Magistrate had proceeded on the basis that the complainant was absent and has also observed that due to lack of evidence *prima facie* case is not made out to frame the charge and hence the accused were acquitted.

5. Learned advocate for the applicant submitted that the complainant could not remain present before the trial Court on account of communication gap with his lawyer. The applicant relies upon the

affidavit filed by the advocate representing him before the trial Court wherein it is stated that he could not attend the proceedings and also stated that his diary could not be updated.

6. Learned advocate for the respondent submitted that learned Magistrate was constrained to pass the said order as the complainant was absent on several occasions. In the absence of any evidence led by the complainant, the learned Magistrate has rightly observed that *prima facie* there is no material to frame charge against the accused. There is no infirmity in the order. Hence, the petition may be dismissed. He relied upon the decision of the Telangana High Court in the case of *Mettu Krishna Reddy v. State of Telangana* in Criminal Appeal No. 172/2021 decided on 21.01.2022 wherein the accused were discharged as the complainant was not present. Apparently, the offences for which process was issued were warrant triable. From the impugned order it appears that the complaint was absent and, therefore, it was observed that the complainant be not step into witness box for the purpose of inquiry. Learned Magistrate then proceeded with the finding that *prima facie* there is no material to frame charge against the accused and also acquit them for all the offences.

7. Be that as it may, in the interest of justice the complainant can be given an opportunity to pursue the proceedings. It is also pertinent to note that the trial Court has passed the order of acquittal on the ground that the complainant was absent and there was no evidence to frame charge against the accused. The Court is not precluded from discharging the accused at the stage of Section 245(1) or 245(2) of Cr. P.C., but the order should reflect application of mind. Considering all these circumstances, the matter can be remanded back to the trial Court for fresh consideration by setting aside the impugned order.

ORDER

- (i) Criminal Appeal No. 121 of 2023(Filing) and Criminal Miscellaneous Application No. 122 of 2023(Filing) are allowed.
- (ii) The impugned order dated 12.01.2023 passed by the learned JMFC, Margao is set aside.
- (iii) Complaint is restored to file.
- (iv) The complainant shall appear before the trial Court on 03.10.2023 at 10 : 00AM.
- (v) The trial Judge shall proceed with the matter in accordance with law.
- (vi) The applicant/complainant shall pay costs of Rs. 5000/- to Goa High Court Bar Association within a period of two weeks from today.
- (vii) Criminal Appeal and Criminal Miscellaneous Application stand disposed of.

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