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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 30 OF 2021

1. Tukaram @ Majoj Parab
Son of Bharat Parab
Aged 35 years, Indian National,
Resident of House No. 411,
Kel Waddo, Pirna, Bardez,
North Goa,
Goa. Pin: 403513.

2. Rohan Kalangutkar
Son of Prabhakar Kalangutkar,
Aged 35 years, Indian National,
Resident of House No. 239,
Bhatiwado, Nerul,
Bardez-Goa. 403 114.

... Petitioners

Versus

1. State,
through Officer-in-charge
Crime Branch Police Station,
Ribandar, Goa.

2. Public Prosecutor,
Bombay High Court at Goa,
Panaji-Goa.

...Respondents

Mr C.A. Ferreira, Senior Advocate with Mr Nehal Govekar, Mr Sujay Kamulkar and Mr Rakesh Naik, Advocates for the Petitioners.

Mr Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**CORAM: ALOK ARADHE, CJ. &
M. S. SONAK, J.**

DATE: 12th March, 2025

ORAL JUDGMENT (Per M.S. Sonak, J.)

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioners, by instituting this petition under Article 226 of the Constitution of India r/w Section 482 of Cr.P.C., seek quashing of FIR No. 2/2021 registered at the Valpoi Police Station (now transferred to Crime Branch Police Station) and Charge Sheet No. 96/2023 dated 25.08.2023 insofar as it concerns the Petitioners.
4. Mr C.A. Ferreira, learned Senior Advocate for the Petitioners, submitted that if the allegations made in the FIR/complaint are taken at their face value and accepted in their entirety, they do not, even *prima facie*, constitute any offence or make out any case against the Petitioners. He pointed out that there was no allegation about the Petitioners being involved in the alleged incident on the morning of 06.01.2021. The only allegation is that the Petitioners were a part of the crowd of about 300 persons that assembled at about 16:00 hours and marched towards the Police Station of Valpoi. He submitted that there are no allegations of the Petitioners or, for that matter, this crowd of 300 persons wielding any deadly weapons or weapons. There are no allegations about any unlawful object. There are no allegations about any actual destruction of Government property. Therefore, applying the test laid down by the Hon'ble Supreme Court in the case of ***State of Haryana and***

Ors. vs. Bhajan Lal and Ors.¹, the impugned FIR and the impugned Charge Sheet may be quashed.

5. Mr Pravin Faldessai learned Additional Public Prosecutor, submitted that the allegations in the complaint must be considered in their entirety. He submitted that only limited offences were levelled against the Petitioners, as was clear from the Charge Sheet. He submitted that the Petitioners were a part of the mob that marched on the Valpoi Police Station, threatening to destroy Government property and injure the Government staff inside the Police Station. Given the limited scope of interference in such matters, he submitted that this petition should be dismissed.

6. The rival contentions now fall for our determination.

7. In January 2021, a proposal to establish an IIT in Valpoi was made. A section of the villagers was apparently opposed to this proposal. So, on 6 January 2021, at about 11.30 a.m., they gathered at the proposed site to agitate and lodge their protest against the proposal. There are allegations of the mob turning violent, leading to police intervention and arrests of some of the agitators.

8. In the afternoon, i.e. at about 16.00 hours, it was alleged that a mob of about 300 villagers, including the two petitioners herein, marched to the police station. There, the crowd raised slogans against the police, and their *“leaders appealed them to maintain blockade while threatening to storm inside the premises of PS*

¹ 1992 Supp (1) SCC 335

Valpoi and cause destruction of govt. property and further injury to the govt. staff inside the premises.”

9. By advertng to the aforementioned allegations, Shri Sagar Ekoskar, Police Inspector at the Valpoi Police Station, lodged an FIR or complaint on 6 January 2021. Following investigations, the impugned chargesheet was filed inter alia against the petitioners herein, alleging the commission of offences under Sections 143, 145, 147, 341, 186, 353, 120-B read with Section 149 of the IPC.

10. Aggrieved, the Petitioners have instituted this petition under Article 226 of the Constitution, read with Section 482 of the Cr. P.C. to quash the impugned FIR and Chargesheet. In *Bhajan Lal* (supra), the Hon’ble Supreme Court has explained that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute any offence or make out a case against the accused, then such FIR/complaint must be quashed. Therefore, we must focus on the FIR/Complaint and determine if it passes the test in *Bhajan Lal* [supra].

11. The FIR/Complaint has two distinct parts. The first part concerns the incident that occurred around 11:30 a.m. on 06.01.2021. Admittedly, the Petitioners were not present in the morning session when that incident occurred. There is no such allegation in the FIR/Complaint, and this was not even contended during the arguments.

12. The second part refers to what allegedly happened at around 16:00 hours on 06.01.2021. The Petitioners are alleged to have been

present at that time. Therefore, the extract from the FIR/complaint, upon which the learned Senior Advocate for the Petitioners and the learned APP relied in support of their respective versions, is transcribed below for the convenience of reference:

“Therefore, the police party and civil administration staff returned to the PS Valpoi. It was reported around 16:00 hrs that protestors in even larger numbers, numbering around 300 persons gathered at Hathwada Junction and began marching towards PS Valpoi shouting slogans and threatening violence against the police staff. Shortly thereafter, the protestors led by Janardhan Bhandari, Dashrath Mandrekar, Sankalp Amonkar, Sachin Bhagat, Rama Kankonkar, (Ms.) Roshan Dessai, Vishwesh Parab, Manoj Parab, Rohan Kalangutkar, Shubham Megnath Shivolkar, Shankar Devli, Nikita Naik, Unnati Melekar, Pooja Melekar, Sadyo Melekar, Shashikant Sanvordekar, Shashikala Savardekar, Dashrath Sangodkar and others reached at PS Valpoi and completely blocked the main road restricting the vehicular traffic and started giving slogans against the police specially against PI Valpoi P S. Thereupon, the SDM and senior officers, on microphone repeatedly requested the protesting crowd to remove the blockade. However, the crowd got even more agitated and their leaders appealed them to maintain blockade while threatening to storm inside the premises of PS Valpoi and cause destruction of govt. property and further injury to the govt. staff inside the premises.”

13. The Charge Sheet alleges that the Petitioners have committed offences under Sections 143, 145, 147, 341, 186, 353, 120-B r/w Section 149 of the IPC based only on the above allegations. Learned APP pointed out that several other offences for which others have

been charged have not been invoked insofar as the Petitioners are concerned.

14. On evaluating the above-transcribed portion, we find it difficult to accept that any of the offences the Petitioners are charged with have been made out even by accepting the allegations at their face value. There are no clear allegations that the Petitioners had assembled in the afternoon session or marched towards the Police Station with any unlawful object or with an objective to commit any crime. There are no allegations about the wielding of deadly weapons. There are no allegations of any actual destruction of Government property or injuries to the Government staff inside the Police Station premises. The only allegation is that the Petitioners and others marched towards the Police Station shouting slogans. Even if the allegations are taken at their face value and accepted in their entirety, we are satisfied that no offence is made under the Sections for which the Petitioners have been charged.

15. Mr Ferreira also relied upon ***Sitaram and Ors. vs. Emperor***², where the learned Judicial Commissioner has held that the law does not declare the mere assemblage of men, however large, illegal. To be illegal, the assemblage must be inspired by an illegal object as specified in Section 141 of the Indian Penal Code. This decision also refers to ***Queen Empress vs. Peelimuthu Tewan***³, where it is held that a large concourse of men armed with sticks and billhooks could not be presumed that their object was necessarily illegal. However, the fact that they were in a large crowd

² AIR 1925 Nag 260

³ (1901) 24 Mad 124

and were armed may raise some suspicion, but such suspicion could not be proof upon which the accused could be convicted.

16. Even if we exclude the precedent in the case of *Peelimuthu Tewan* (supra), the statement of law that a mere assemblage of persons, however large, may not be an offence unless some illegal object inspires it can be said to be attracted to the facts of the present case. In *Madan Singh v. State of Bihar [2004] 4 SCC 622*, the Hon'ble Supreme Court held that mere presence in an unlawful assembly does not render any persons automatically liable unless there is evidence to suggest that they were motivated by common objects set out in Section 141 Cr.P.C. Thus, the presence and sharing of a common unlawful object is a must to invoke Section 149 IPC. Mere presence is not enough. Going by the allegations in the FIR/complaint, we are satisfied that no offences have been made, and any further continuance of the petitioner's prosecution would amount to an abuse of the Judicial process.

17. Prosecutions must not be launched to stifle agitations that are part of the democratic process so long as people do not take the law into their own hands or indulge in violence or damage to public or private property. Article 19(1)(b) of the Constitution guarantees the right to assemble peaceably and without arms. While reasonable restrictions could always be imposed on exercising this fundamental right, such right must not be diluted or stifled based upon vague charges bereft of the essential ingredients to constitute offences under the penal laws. The lines between the constitutional right to protest and the unleashing of penal prosecutions cannot be allowed to be blurred. If this mindset gains traction, it would be a sad day for democracy. **[see *Mazdoor Kisan Shakti***

Sanghatan v. UOI 2018(11) SCR 586 and Himmat Lal v. Commissioner AIR 1973 SC 87]

18. For the above reasons, we allow this petition, quash and set aside the impugned FIR No.2/2021 registered at Valpoi Police Station (now transferred to the Crime Branch) and Charge Sheet No.96/2023 dated 25.08.2023 filed before the J.M.F.C., Valpoi and since registered as Case No. IPC/33/2023 insofar as the Petitioners are concerned.

19. The Rule is made absolute in the above terms without any cost order.

20. All concerned must act on an authenticated copy of this order.

M. S. SONAK, J.

CHIEF JUSTICE