

**IN THE HIGH COURT OF BOMBAY AT GOA.**  
**CRIMINAL WRIT PETITION NO. 66 OF 2015.**

1. Mr. Dipak Manharlal Rajani  
aged 59 years, Indian National,  
resident of C22/336, Machados  
Cove, Near International Centre,  
Dona Paula-Goa.
2. Mr. Manharlal Damodar Rajani,  
aged 79 years, Indian National,  
through his next friend,  
Mr. Dipak Manharlal Rajani,  
resident of C22/336, Machados  
Cove, Near International Centre,  
Dona Paula-Goa. .... Petitioners.

Versus

1. State, through its Public Prosecutor,  
High Court of Bombay, at Goa.
2. Police Inspector, Valpoi,  
Police Station, Valpoi,  
Sattari-Goa. ....Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. D. Pangam,  
Advocate for the petitioners.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

**Coram:-F. M. REIS,**  
**K. L. WADANE, JJ.**

**Date:-16<sup>th</sup> June, 2015.**

**ORAL JUDGMENT ( Per K. L. Wadane, J)**

Affidavit filed by the petitioner no.1 is taken on  
record and marked "X" for identification.

2. Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioners and Mr. S. R. Rivankar, learned Public Prosecutor appearing for the respondents.

3. Rule. Heard forthwith with the consent of the learned Counsel for the respective parties.

4. Mr. Rivankar, learned Public Prosecutor waives notice on behalf of the respondents.

5. The present petition is filed by the petitioners under Articles 226 and 227 of the Constitution of India and under Section 482 of the Criminal Procedure Code, 1973 seeking to quash the chargesheet filed in Criminal Case No. 30/S/2015 before the Judicial Magistrate First Class at Valpoi, Sattari, Goa and the FIR No. 17/2012 dated 19.3.2012.

6. The petitioners state that they have received summons issued by the Judicial Magistrate, First Class, Valpoi for the aforesaid matters and they appeared through their Advocate before the Judicial Magistrate, First Class. They have been chargesheeted by the concerned police for the offence punishable under Sections 379, 403, 405, 415, 418, 420 read with Section 34 of Indian Penal Code, 1860 based upon the complaint filed by one Ramakant Shetye.

7. The petitioners state that the petitioner no.1 is a serious cardiac patient and undergone coronary artery bypass grafting at Apex Heart Institute, Ahmedabad and he is under treatment. He is advised complete rest and to avoid physical work and long drive. The petitioner no.1 has to do regular follow up with the treatment and consultation with the doctor.

8. The petitioner no. 2 is an aged person of 79 years of age having several age related ailments. His wife also have serious illness for which she has been presently taken to England and Portugal for treatment. The petitioner no. 2 is personally abroad in connection with the treatment of his wife.

9. The petitioners seek to quash chargesheet and FIR mainly on the ground that the entire chargesheet does not disclose any offence and no ingredients of criminal offence have been made out. Further more, there is a civil dispute between the complainant and the accused persons and in order to mount pressure on the accused persons to settle the dispute, the complainant has filed false case.

10. On perusal of the record, it appears that the present petitioners have not personally appeared before the learned JMFC. Therefore, obviously present petitioners have an

opportunity to raise their grievance before the learned trial Court before framing the charge or even they can apply for discharge and in that process the petitioners can raise all the grounds mentioned in the present petition. Even it is seen that the investigating officer has submitted the chargesheet after investigation. In such circumstances, there is an opportunity for the petitioners to raise their contentions about the availability of the evidence on record whether it is sufficient to frame the charge.

11. During the course of arguments, Mr. Lotlikar, learned Senior Counsel appearing for the petitioners has submitted affidavit/undertaking of the petitioner no.1 wherein the petitioner no.1 undertakes that in the event the Judicial Magistrate First Class directs that they should remain present for hearing at any future date after decision on framing of charge they shall remain present accordingly. The said undertaking is accepted.

12. In view of the above undertaking, we direct the learned trial Court that it should not insist for the personal appearance of the petitioners till the decision on framing of the charge.

13. Rule is made absolute in above terms with no order as to costs.

**K. L. WADANE, J.**  
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**F. M. REIS, J.**