

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO. 97 OF 2014**

1. Bhonsle Dairy, having  
Office at Bhonsle Dairy,  
Opposite Bhagwati Tiles,  
Mungali, St. Jose De  
Areal, Salcete-Goa,  
represented by Partners:
2. Shri Vishwas A. Bhonsle,  
aged 43 years, son of late  
Anandrao Bhonsle (Partner).
3. Shri Vilas A. Bhonsle,  
aged 40 years, son of late  
Anandrao Bhonsle (Partner).
4. Shri Vikas A. Bhonsle,  
aged 32 years, son of late  
Anandrao Bhonsle (Partner).
5. Smt. Nirmala A. Bhonsle,  
aged 65 years, wife of late  
Anandrao Bhonsle (Partner)

(as regards Petitioners No. 4 and 5  
proceedings are under Section  
299 of Cr.P.C.)

All having its office at Bhonsle  
Dairy, Opposite Bhagwati Tiles,  
Mungali, St. Jose De Areal,  
Salcete-Goa.

... Petitioners.

Versus

1. Mr. Suresh Patel, son of  
Ladharam J. Patel aged  
35 years, resident of

Mungali, St. Jose De Areal,  
Salcete, Goa.

2. The Public Prosecutor,  
High Court of Bombay at  
Panaji, Goa.

... Respondents.

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Mr. Arun Bras De Sa, Advocate for the Petitioners.

Mr. C.A. Ferreira with Ms. Richelle Almeida Advocates for the  
Respondent No. 1.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Respondent  
No. 2.

**Coram:- U. V. BAKRE, J.**

**Date:- 14<sup>th</sup> January, 2015**

**ORAL JUDGMENT:**

Heard Mr. Bras De Sa, learned Counsel for the petitioners,  
Mr. Ferreira, learned Counsel for the respondent no. 1 and Mr.  
Amonkar, learned Additional Public Prosecutor for the respondent  
no. 2.

**2.** Rule. By consent, Rule made returnable and heard  
forthwith.

**3.** By this petition, the petitioners have prayed for quashing and setting aside the order dated 14.02.2014 passed by the learned Additional Sessions Judge, FTC-1, Margao in Criminal Appeal No. 06/2013.

**4.** The respondent no. 1 had filed an application dated 20.09.2013, under Section 391 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short), before the learned Additional Sessions Judge, FTC-1, Margao, in Criminal Appeal No. 06/2013, seeking permission to adduce additional evidence by way of producing eight documents as mentioned in paragraph 5 of the said application. By the impugned order, the learned Judge has allowed the said application filed by the respondent no. 1. The learned Additional Sessions Judge has mentioned adequate reasons for permitting the said application under Section 391 of Cr.P.C.

**5.** Section 391 of Cr.P.C. provides as under:

***"391. Appellate Court may take further evidence or direct it to be taken –***

*(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may*

*either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*

*(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.*

*(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.*

*(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."*

**6.** The grievance of Mr. Bras De Sa, learned Counsel for the petitioners is that the learned Additional Sessions Judge has not permitted the petitioners to cross examine the witness/es on the said documents, subsequent to allowing the said application. Mr. Bras De Sa, learned Counsel submitted that respondent no. 1 ought to tender evidence with regard to the said additional documents, in accordance with law, i.e. in accordance with the provisions of Chapter XXIII of Cr.P.C. He also contended that after the cross examination of the witness/es on the said documents, if the petitioners feel it

necessary to give evidence in rebuttal, they must get an opportunity to apply for leave to do the same.

**7.** On the other hand, Mr. Ferreira, learned Counsel for the respondent no. 1 submitted that the application for adducing additional evidence has been rightly granted by the lower Court. He, however, submitted that it would always be open to the petitioners to cross examine the witness/es examined by the respondent no. 1 on the said documents. To this limited extent, Mr. Ferreira, learned Counsel for the respondent no. 1 has no objection if, leave is granted to the petitioners to cross examine the witness/es on the said document in view of the settled law laid down in the case of **"Rajeswar Prasad Misra Vs. State of W.B."**, reported in [AIR 1965 SC 1887].

**8.** In my considered view, the learned Lower Court has rightly allowed the application for adducing additional evidence, by giving appropriate reasons for the same, as the said additional evidence is required for just decision in the matter. In the case of **"Rajeswar Prasad Misra"** (supra), the learned Division Bench of the High Court of Calcutta, in criminal appeal against acquittal, had allowed the

production of additional documents by the complainant. The order passed by the Division Bench has been set out in paragraph 2 of the case supra, as under :

*"After hearing the arguments on both the sides, it appears to be necessary to take certain additional documentary evidence for arriving at a just decision in the case. The documents in question are the agency ledgers for 1958 relating to the selling agents Md. Isaq and Sons and Bombay Fancy Stores; and the collection book Part I of 1958 which supplements the collection book Part II which was marked as Ext. 19. The Presidency Magistrate S.N. Sanyal or his successor Magistrate will please take the necessary evidence so that the above documents and registers are formally proved and allow the accused an opportunity to cross-examine the witnesses proving the documents, and then transmit the records with the registers and documents to this Court within a period of six weeks from the date."*

**9.** The Hon'ble Supreme Court in the case supra maintained the above order of the High Court. In the impugned order, the lower Court has not stated that the respondent no. 1 shall tender the said documents by way of oral in evidence, through witness/es and the petitioners would be at liberty to cross-examination the said

witness/es, vis-a-vis the additional documents so tendered. In the circumstances above, the petition deserves to be partly allowed.

**10.** In view of the above, the petition is partly allowed. The impugned order is maintained. But, the respondent no. 1 shall tender the said documents mentioned in the application at Exhibit 21, under Section 391 of Cr.P.C., in oral evidence, through witness/es and the petitioners shall be granted opportunity to cross examine said the witness/es on the said documents. The learned Additional Sessions Judge may either take the additional evidence himself or may send the same to the concerned Magistrate in accordance with the provision under Section 391 of Cr.P.C.

**11.** Rule is made absolute in the aforesaid terms. The writ petition stands disposed of accordingly.

**U. V. BAKRE, J.**

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