

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 47 OF 2012

1. Smt. Laxmi Anil Salgaocar,
Occupation - Business,
R/o Door no.3/4311,
Salgaocar Bungalow, Gogol,
Margao-Goa, 403 602.
2. Smt. Rakhee Arjun Salgaocar
Occupation - Business,
R/o Door no.3/4311,
Salgaocar Bungalow, Gogol,
Margao-Goa, 403 602.
3. Shri Arjun Anil Salgaocar
Occupation - Business
R/o Door no.3/4311,
Salgaocar Bungalow, Gogol,
Margao-Goa, 403 602.
4. Shri Sameer Anil Salgaocar
Occupation - Business,
R/o Door no.3/4311,
Salgaocar Bungalow, Gogol,
Margao-Goa, 403 602. .. Petitioners

Versus

1. Mahabaleshwar R Hegde,
Chartered Accountant,
Villa No.A-13, "KAVERI",
Sapana Harmony, Gogol,
P.O. Fatorda, Margao-Goa,
403 602.
2. State of Goa,
through Public Prosecutor,
Panaji-Goa.
3. Shantilal Khushaldas and
Brothers Private Limited,
Salgaocar Chambers,

Luis Miranda Road,
next to Margao Residency
(Formerly Tourist Hostel),
Margao-Goa.

4. Anil Vassudeva Salgaocar
R/o Door no.3/4311,
Salgaocar Bungalow, Gogol,
Margao-Goa, 403 602. .. Respondents

Mr. A. D. Bhobe and Ms. Maria Carmita Mashelkar and Ms. V. Shetye and Ms. S. Bhobe, Advocates for the Petitioners.

Mr. S. G. Bhobe and Ms. N. Pimenta, Advocates for the respondent no.1.

CORAM :- C. V. BHADANG, J.

Date : 15th April, 2015

ORAL JUDGMENT :

Although the complaint case filed in the year 2005 is still at a primary stage, where the original complainant has tendered his affidavit in lieu of examination-in-chief, the matter has travelled to this Court twice.

2. The petitioners are the original accused nos. 3 to 6 in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short), filed by the first respondent. The third and the fourth respondent herein are the original accused nos.1

and 2. That case is pending before the learned Judicial Magistrate, First Class at Margao. It appears that the learned Magistrate, by an order dated 11/02/2005, had issued process against the original accused nos.1 and 2. On 30/07/2005, an application came to be filed on behalf of the first respondent for issuance of process against the present petitioners i.e. the accused nos. 3 to 6. That application was allowed by order dated 01/09/2005. The present petitioners filed Criminal Revision Application No.65/2005, before the learned Sessions Judge, challenging the said order, which was allowed by a judgment and order dated 31/01/2007, *inter alia*, on the ground that the first respondent had not challenged the initial order dated 11/02/2005, whereby process was issued only against the accused nos.1 and 2. The first respondent then sought to challenge the order dated 11/02/2005, by filing a Revision, accompanied by an application for condonation of delay, which was registered as Criminal Miscellaneous Application no.29/2007. However, the learned Sessions Judge, by an order dated 26/11/2007, dismissed the said application, thus, refusing to condone the delay. The first respondent unsuccessfully challenged the said order before this Court in Criminal Revision Application No.20/2008, as this Court dismissed the same, by order dated 17/06/2008. It appears that thereafter, an affidavit in lieu of examination-in-chief came to be filed on behalf of the respondent

before the Magistrate on 11/11/2009 and some documents were exhibited on 10/02/2010. Thereafter, an application was filed on behalf of the first respondent, purportedly under Section 319 of the Code of Criminal Procedure, for addition of accused, namely the present petitioners. That application was dismissed by the learned Magistrate on 29/09/2010, against which, the first respondent filed Criminal Revision Application no. 84/2010 before the learned Sessions Judge. The said Criminal Revision Application has been allowed on 08/06/2011, directing issuance of process against the petitioners. That judgment and order is subject matter of challenge in this revision application.

3. I have heard Shri A. D. Bhobe, the learned Counsel for the petitioners and Shri S. G. Bhobe, the learned Counsel for the respondent no.1. Perused record.

4. Apart from the other contentions on merits, it was submitted on behalf of the petitioners that the present petitioners were not made parties in Criminal Revision Application No.84/2010. It is submitted that the application under Section 319 of Cr.P.C., was dismissed, which order was in favour of the petitioners. The petitioners were also heard on that application. Thus, the said order could not have been reversed without hearing

the petitioners.

5. I have considered the rival circumstances and the submissions made. It appears that once there was an order in favour of the present petitioners, whereby the learned Magistrate had refused to issue process, that order could not have been reversed behind the back of the present petitioners. On this short ground alone, the matter will have to be sent back to the learned Sessions Judge.

6. However, the learned Counsel for the parties fairly submit that the complaint before the learned Magistrate is pending since 2005 and it may not be appropriate to send the matter back to the learned Sessions Judge. The learned Counsel for the first respondent submitted that, subject to a liberty to file application under Section 319 of Cr.P.C., if so advised, after the evidence of the witness for the first respondent is over, the matter can go back to the learned Magistrate.

7. Shri A. D. Bhole, the learned Counsel for the petitioners fairly submitted that appropriate orders may be passed.

8. Having heard the learned Counsel for the parties and considering the overall circumstances and the rival submissions made, the following order is passed :

(i) The impugned order dated 08/06/2011 is hereby set aside, with liberty to the first respondent to apply afresh under Section 319 of Cr.P.C., if so advised, after the evidence of the present witness i.e. the complainant, is over.

(ii) All the rival contentions of the parties are kept open.

(iii) It is made clear that if such an application is filed, the same shall be decided in accordance with law and without being influenced by the observations made herein.

(iv) No order as to costs.

C. V. BHADANG, J.

SMA