

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 57 OF 2016

DOMNIC D'SOUZA AND ANR.,

... Petitioners

Versus

THE POLICE INSPECTOR, MAPUSA
POLICE STATION AND ANR.,

... Respondents

Mr. Kapil D. Kerkar, Advocate for the petitioners.

Mr. P. Faldessai, Additional Government Advocate for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 27th April, 2016

P.C.

Heard the learned Counsel for the petitioners.

2. By this petition, the petitioners, who are accused in Criminal Case No.175/2012/A before the learned Judicial Magistrate, First Class at Mapusa are challenging the order dated 10/03/2016, by which the learned Magistrate has refused to call for Video recording and a copy of the station diary entry as insisted upon by the petitioners. The learned Magistrate has found that at the stage of framing of charge, the Court is only required to consider the documents produced by the prosecution and stage for exercise of powers under Section 91 of Cr.P.C. had not arrived.

3. The learned Counsel for the petitioners has placed reliance on the

decision of this Court in the case of KAMAL AHMED MOHAMMED VAKIL AND ORS. VS. STATE OF MAHARASHTRA reported in 2013 CRI. L. J. 858, in order to submit that the Court can summon the document at any stage. It is submitted that the fact that the prosecution is not relying on any such document cannot be a ground to refuse production.

4. The learned Additional Public Prosecutor has placed reliance on the decision of the Hon'ble Supreme Court in the case of STATE OF MAHARASHTRA VS. DEBENDRA NATH PADHI, reported in AIR 2005 SC 359, in order to submit that at the stage of framing of charge, the defence of the accused is not relevant and the provisions of Section 91 of Cr.P.C. cannot be invoked by the accused to compel production of documents at that stage to show his innocence.

5. I have considered the rival circumstances and the submissions made.

6. It is clear from the decision of the Hon'ble Apex Court in the case of DEBENDRA NATH (supra) that at the stage of framing of charge, the provisions of Section 91 of Cr.P.C. cannot be invoked. It is needless to mention that if at the trial the Magistrate finds that the documents are necessary, it would always be open for the Magistrate to call for such documents. I do not find that the impugned order suffers from any infirmity and as such, no case for interference is

made out.

7. The Criminal Writ Petition is, accordingly, dismissed.

C. V. BHADANG, J.

SMA