

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 13 OF 2015**

State of Goa, Through Investigation
Officer/S.P., Panaji, Goa. Petitioner

Versus

Prakash Talwar, s/o Krishna Talwar,
42 years, driver, r/o Tariwada, Near
Laxmi Bar, Near Bridge, Mapusa,
Bardez, Goa. Respondent

Shri S.R. Rivankar, Public Prosecutor for the Petitioner.

Shri Pavithran A.V., Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 10th OCTOBER, 2017.

ORAL JUDGMENT:

This petition can be disposed of on a short ground.

2. On the basis of a complaint lodged by the learned Sessions Judge, Margao, the respondent was tried by the learned Judicial Magistrate First Class at Margao, in Criminal Case No. 381/S/2003/III, for the offence punishable under Section 193 of the Indian Penal Code (IPC, for short).

3. By judgment and order dated 21.12.2011, the learned Magistrate found the respondent guilty of the offence and sentenced him to simple imprisonment for a period of two years and to pay fine of Rs.20,000/- and in default of payment of fine, to undergo simple imprisonment for one year.

4. The respondent challenged the same before the learned Sessions Judge in Criminal Appeal No. 05/2012. By the impugned judgment dated 22.04.2013, the learned Sessions Judge has partly allowed the appeal in the following terms:

“The instant appeal is partly allowed. The impugned judgment dated 21.12.2011 passed by the learned J.M.F.C., Margao, in Criminal Case No. 381/S/2003/III is quashed and set aside. The charge framed against the appellant herein is also quashed and set aside. The learned trial Judge is directed to treat the evidence on record as the evidence before framing charge in terms of Section 244 of Cr.P.C. and consider if any case is made out for framing charge against the accused and if so frame the charge afresh and proceed in accordance with law. The appellant to appear before the trial Court on 11.6.2013 at 10.00 a.m.”

5. The learned Sessions Judge has placed reliance on the judgment of this Court in the case of **Shri Jose Marie**

Albert Vales Vs. The District and Sessions Judge & Another, 2013 (3) BCR (Cri) 163, holding that in a complaint under Section 193 of Cr.P.C., the Magistrate is obliged to follow the procedure for trial of cases, instituted otherwise than on police report.

6. I have heard Shri Rivankar, the learned Public Prosecutor for the petitioner and Shri Pavithran, the learned Counsel for the respondent.

7. The learned Public Prosecutor has brought to my notice the judgment of the Hon'ble Supreme Court in the case of **State of Goa Vs. Jose Maria Albert Vales, 2017 (9) Scale 527**, in which the Supreme Court has *inter alia* held that in the face of Section 343(1) of the Code, the procedure in respect of cases instituted, otherwise than on police report is not attracted, qua the complaint under Section 340 and/or Section 341 of the Code.

8. It is undisputed that the learned Sessions Judge had allowed the appeal only on the basis of the law declared by this Court in the case of **Shri Jose Marie Albert Vales** (supra) and the learned Sessions Judge has not examined the judgment of

conviction and sentence on merits. It would therefore be necessary to restore the Criminal Appeal back to the file of the learned Additional District Judge, Margao.

9. In view of the aforesaid decision of the Supreme Court in the case of **Jose Maria Albert Vales** (supra), the present petition has to succeed. In the result, the petition is allowed. The impugned judgment and order passed by the learned Sessions Judge is hereby set aside. Criminal Appeal No. 05/2012 is restored back to the the file of the learned Additional Sessions Judge at Margao, for disposal in accordance with law. The parties to appear before the learned Sessions Judge on 14.11.2017. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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