

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 12 OF 2015**

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

Versus

Shri Subhash Mhamal Mandrekar, son
of Shri Raghuvir Mandrekar, Major in
age, R/o H. No. 212, Sukabhat,
Seraulim, Salcete, Goa. Respondent

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

Shri Harshad Arsekar, 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 a complaint lodged on behalf of the learned Sessions Judge, Margao under Section 193 of the Indian Penal Code, 1860 (IPC, for short), charge was framed against the respondent (accused) on 14.02.2007. During the trial of the case, the respondent/accused filed an application for dropping the proceedings, which was dismissed by the learned Magistrate by order dated 07.11.2012. This was challenged by

the respondent before the learned Additional Sessions Judge in Criminal Appeal No. 10/2013. The learned Sessions Judge placing reliance on the decision 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 IPC, the Magistrate is required to observe the procedure for trial of cases instituted otherwise than on police report, allowed the appeal thereby setting aside the order of the Magistrate and directing the learned Magistrate to treat the evidence on record as evidence before framing charge in terms of Section 244 of the Code of Criminal Procedure, 1973 (code, for short) and then to consider if any case is made out for framing a charge. It is this order of the learned Sessions Judge, which is subject matter of challenge in this petition.

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

4. Shri Rivankar, the learned Public Prosecutor for the petitioner 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 judgment and order dated 05.03.2013 passed by this Court in Criminal Writ Petition No. 113/2012 has been set aside holding 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.

5. In view of the decision of the Supreme Court in the case of **Jose Maria Albert Vales** (supra), the instant petition has to succeed. In the result, the criminal writ petition is allowed. The impugned judgment and order passed by the learned Sessions Judge is hereby set aside. The order passed by the learned Magistrate on 07.11.2012 is hereby restored. The learned Magistrate shall proceed to decide the case from the stage of framing of charge in compliance with the provisions of Section 343(1) of the Code. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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