

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NOS.58 TO 61 OF 2017**

1. Mr. R. K. Chawla
Director,
Goa Food & Pharma (P)
Ltd, 109, Kundaim
Industrial Estate, Kundaim,
Ponda Goa
2. Mrs. Neena Chawla
Goa Food & Pharma (P) Ltd
109, Kundaim
Industrial Estate, Kundaim,
Ponda Goa
3. Goa Food & Pharma (P) Ltd
(registered under Companies
Act, 1956)
109, Kundaim
Industrial Estate, Kundaim,
Ponda Goa ... petitioners

Versus

Goa Antibiotics & Pharmaceuticals
Ltd (A Government of Goa
Undertaking Registered under the
Companies Act, 1956)
Through its authorized personnel
Mr. Bramhanand G. Parab
Head of Personnel Administration
& HR Tuem, Pernem, Goa ... Respondent

Mr. S. M. Singbal, Advocate for the petitioners.

Coram :- M. S. SONAK, J.**Date :- 10th April,, 2017****ORAL ORDER :**

Heard Mr. Singbal for the petitioners in all these

petitions.

2. The challenge in these petitions is to the common judgment and order dated 25/10/2016, by which, the learned Sessions Judge has allowed production of documents listed in the application dated 10/10/2013. However, the question of evidentiary value of these documents has been kept specifically open.

3. The respondent/ complainant, by an application dated 10/10/2013, applied to the learned Trial Judge, for production of the following documents :

“(1) Extract of Resolution appointing Mr. Gerald Fernandes i.e. PW1 to file complaint before the Court and

(2) Records of Registrar of Companies to show that accused no.2 is a Director of Goa Food & Pharma Ltd.

(3) Certificate from Government of Goa to the effect that the Complainant Company is a 100 % State Enterprise of Government of Goa.

(4) Document evidencing the Mrs. Neena Chawla has a pecuniary interest in S.M.C. Health Aid

Distributors.”

4. The learned Trial Judge, by his order dated 25/10/2016, granted leave for the production of documents at serial nos.1 and 2 above, but declined to grant leave for production of the documents at serial nos.3 and 4. In so far as the documents at serial no.3 is concerned, the learned Trial Judge observed that there is no dispute that the complainant Company is 100 % State enterprise of the Government of Goa and, therefore, reasoned that there is no necessity to produce such document. In so far as document at serial no.4 is concerned, this is what the learned Trial Judge has observed :

“The letter dated 25.9.1997 sought to be produced is issued by S.M.C. Health Aid Distributors and same is signed by the accused no.2 on behalf of the said firm. It is not known whether said S.M.C. Health Aid Distributors and Messrs Health Aid (India) are one and the same concern. Further, merely because a person signs on behalf of a firm, it cannot be said that said person has a pecuniary interest in such firm. There is absolutely no supporting evidence produced by the complainant to prima facie show that the accused no.2 has any pecuniary interest in said firm. Said letter also does not specify the position/ status of the accused no.2.”

5. The learned Sessions Judge in revision has interfered with the learned Trial Judge's order dated 25/10/2016 and permitted the production of the documents at serial nos.3 and 4 whilst specifically keeping open the evidentiary value to be assigned to these documents.

6. Mr. Singbal, the learned Counsel for the petitioners submits that the learned Trial Judge's order dated 25/10/2016 is purely an interlocutory order against which no revision lay under Section 397 of Cr.P.C. In support of this contention, Mr. Singbal relies upon the decision of Hon'ble Apex Court in **SETHURAMAN VS. RAJAMANICKAM**; 2009(5) SCC 153. In any case, he submits that the learned Sessions Judge has not even adverted to the issue of relevance of two documents and unless there was a finding that these documents are relevant, there was no question of permitting production of such documents. He also submits that the Sessions Judge by impugned order dated 25/10/2016 had in fact permitted the production of documents at serial nos.1 and 2 above. However, thereafter, by a corrigendum dated 16/02/2017, the impugned order was purported to be corrected, so as to permit production of documents at serial nos.3 and 4. Mr. Singbal submits that such a course of action was barred under Section 362

of Cr.P.C.

7. In the facts and circumstances of this case, it cannot be said that the impugned order made by the learned Trial Judge was purely an interlocutory order. In terms of the impugned order, leave was declined to produce on record certain documents though leave was granted to produce certain other documents. The stage at which the learned Sessions Judge has chosen to exercise revisional jurisdiction, to say the least, was an important stage in the matter. Further, since there is no dispute that the complainant Company is 100 % State Enterprise of the Government of Goa. It, really, makes no difference as to whether the documents at serial no.3 is permitted to be produced or not. Now that the learned Sessions Judge has permitted the production of said documents, it is not necessary to interfere with the learned Sessions Judge's order. The aspect, whether the complainant Company is 100 % State enterprise or not, cannot be said to be irrelevant matter in the facts and circumstances of the present case.

8. In so far as the document at serial no.3 is concerned, Mr. Singbal may be justified in some of his criticism. Mr. Singbal submits that merely because the document bears signature of Ms.

Neena Chawla, that by itself, is not sufficient to conclude that Ms. Neena Chawla had pecuniary interest in S.M.C. Health Aid Distributors. In fact, this is what is observed by the learned Trial Judge in the order dated 25/10/2016. Further, the learned Trial Judge proceeded further to record certain observations, which were really not warranted at the stage at which they were made. The learned Sessions Judge has merely permitted production of the document at serial no.4 and at the same time, made it very clear that the question of evidentiary value to be assigned to such documents is kept specifically open. The learned Sessions Judge, in order to adopt such a course of action, has relied upon the decision of Hon'ble Apex Court in the case of ***Bipin Shantilal Panchal Vs. State of Gujrat***; 2001(3) SCC 1 and has even quoted the relevant observations in paragraph 11 of the impugned order.

9. The aforesaid means that though leave is granted to produce on record the documents at serial nos.3 and 4, the question of evidentiary value of the documents, has been kept open. The submissions now advanced by Mr. Singbal can always be considered at appropriate stage by the learned Trial Judge, since, the issue of evidentiary value has been kept specifically open.

10. The objection based upon Section 362 of Cr.P.C. need not be sustained in the peculiar facts and circumstances of the present case. It is to be noted that the learned Trial Judge had already granted leave to produce documents at serial nos.1 and 2 above. Revision was instituted by the respondents, being aggrieved by the denial of leave to produce documents at serial nos.3 and 4. The Revision Application was allowed, however, it was stated that leave is being granted to produce the documents at serial nos.1 and 2. This was clearly a clerical error or an error in the nature of clerical error. Section 362 of Cr.P.C. itself provides save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

11. For the aforesaid cumulative reasons, these petitions are dismissed. However, it is once again reiterated that though leave to produce documents is granted to the respondents, the question of evidentiary value of said documents is specifically kept open.

12. Further, since, the trial is pending since last more than

a decade, the learned Trial Judge is directed to dispose of the same as expeditiously as possible. All parties to co-operate with the learned Trial Judge in the matter of expeditious disposal of the matter.

13. It is clarified that nothing in this order or for that matter, nothing in the impugned order, should be construed as any reflection of merits of the matter.

SMA

M. S. SONAK, J.