

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 97 OF 2017**

Union of India,
Represented by Dr. Kale,
Regional Director,
Ministry of Mines,
Office of Indian Bureau of Mines,
Opposite R.T.O. Office,
Fatorda, Margao, Goa.

.... Petitioners

V e r s u s

1. M/s. Mineira Nacional Limitada,
An Unregistered Partnership Firm,
Represented by its Partners,
Shri Anil V. Salgaonkar,
Salgaonkar Chambers, Margao, Goa.
2. Shri Arjun Anil Salgaoncar,
Partner of M/s. Mineira Nacional Limitada,
An unregistered Partnership Firm,
Salgaoncar Chambers, Margao Goa.
3. M/s. Hardesh Ores Private Limited,
A Company incorporated under
The India Companies Act, 1956,
Through its Managing Director,
Having its Registered Office at,
Villa Flores Da Silva,
Erasmus Carvalho street,
Margao – Goa.
4. Mr. Francisco Lume Pereira,
Director of M/s. Hardesh Ores Private Limited,
Villa Flores Da Silva,
R/O House no.33/212,
Senaulim, Verna,
Salcete, Goa, 403 722.

5. Shri Y. S. Reddy,
Mining Engineer,
M/s. Hardesh Ores Private Limited,
Villa Flores Da Silva,
Erasmus Carvalho Street,
Margao, Salcete, Goa.

..... Respondents.

Shri Mahesh Amonkar, Central Government Standing Counsel for the
Petitioner.

Shri A. D. Bhobe, Advocate for the Respondent no.1.

Shri Parag Rao, Advocate for Respondent nos.3 and 4.

CORAM: C. V. BHADANG, J.
DATE: 7TH AUGUST, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the
respective respondents waive service. Heard finally by consent of parties.

2. Heard Shri Amonkar, the learned Central Government Standing
counsel for the petitioners, Shri Bhobe, the learned counsel for respondent
no.1 and Shri Rao, the learned counsel for the respondent nos. 3 and 4.

3. The petitioner/complainant is challenging the Judgment and
order dated 9/3/2017 passed by the learned Sessions Judge, South Goa, at
Margao whereby the learned Sessions Judge while dismissing the revision
application has confirmed the order dated 10/8/2016 passed by the learned
Magistrate refusing to discard the evidence of P.W.1 for permission to

examine other witnesses.

4. The brief facts are that the petitioner has filed a private complaint against the respondents for the offence punishable under Rule 9(1), 13(1), 16(3) and 34 r/w Rule 58 of the Mineral Conservation and Development Rules 1988. The complaint is signed by Shri Kalmati M. K., Senior Mining Geologist of the petitioner. It appears that examination in chief of the said witness was recorded partly, when the petitioner filed an appeal on 10/8/2016 stating that Mr. Kalmati is unable to depose in the matter on account of his throat problem and therefore, the complainant wishes to examine Dr. Y.G. Kale, Regional Director, Indian Bureau of Mines in his place. The Petitioner, therefore, prayed for discarding the part deposition of Mr. Kalmati and permitting the petitioner to examine Dr. Kale in his place. The learned Magistrate has rejected the application on the ground that the application is not supported by medical certificate and it is not the case made out in the application that on account of throat problem the said witness is unable to speak. The said order has been confirmed by the learned Sessions Judge. Hence this petition.

5. During the course of the arguments at bar, Shri Amonkar, the learned Standing Counsel, on instructions, states that the petitioner shall further

examine Shri Kalmati M.K. along with other witnesses, if any. He submits that the evidence to be led is essentially based on record and the witness may be permitted to refresh his memory.

6. In view of the fact that the petitioner wants to examine Dr. Kalmati M. K. after making appropriate prayer before the learned Magistrate for permitting the witness to refresh his memory, nothing survives in the petition. In such circumstances, the petition is disposed of with liberty to the petitioner to examine Mr. Kalmati M. K. along with any other witness, if necessary. In the event, the petitioner makes a request for permitting the witness to refresh his memory, the trial court shall pass appropriate orders in accordance with law.

C. V. BHADANG, J.

Ap/