

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 191 OF 2018

ADV. ANAND PALKAR.

... Petitioner

Versus

THE POLICE INSPECTOR,
MAPUSA POLICE STATION,
MAPUSA AND ORS.

... Respondents

Shri Kapil D. Kerkar, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondents No.1
& 2.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 28th February 2019

ORAL ORDER :

Heard Shri Kapil D. Kerkar, learned Advocate for the petitioner and Shri S.R. Rivankar, learned Public Prosecutor for the respondents no.1 & 2.

2. It has been the contention of the learned Advocate for the petitioner that though the offences have been registered against the accused under various sections of the Indian Penal Code, an offence under Section 452 of the Indian Penal Code has not been registered against the accused. He has moved an application to take over the prosecution under Section 302 of the Criminal Procedure Code which has been disallowed by the

learned Trial Court. He placed reliance in **J.K. International V/s. State (Government of NCT Delhi) [2001 Cr.L.J. 259]** and in **Dhariwal Industries Ltd. V/s. Kishore Wadhwani & Ors. [2016 10 SCC 378]**. In his contention, the learned Assistant Public Prosecutor ought to have taken initiative to see that the charge was framed against the accused under Section 452 of the Indian Penal Code amongst others.

3. i have perused the judgments relied upon supra and the order under challenge and from which it is apparent that there has been no application on behalf of the petitioner to prevail upon the Trial Judge to formulate charge against the accused also under Section 452 of the Indian Penal Code. Besides, the learned Trial Judge has made an observation that there are no allegations made against the Assistant Public Prosecutor nor is there any averment in the application to hold that the case of the complainant would be prejudiced in any manner whatsoever. The learned Judge has observed that the complainant is permitted to assist the prosecution and in case need be to assist the Court in altering the charge if justified. From the tenor of the order no illegality is spelt out. Nonetheless, liberty is granted to the petitioner to assist the

Court to invite its attention to the fact that the charge under Section 452 of the Indian Penal Code is required to be framed against the accused. In the event the learned JMFC does not consider the said request and/or that the petitioner has a grievance that the learned Assistant Public Prosecutor conducting the trial is not co-operating in the matter, it shall be the prerogative of the petitioner to move this Court for appropriate reliefs. In these terms, the petition stands disposed off.

NUTAN D. SARDESSAI, J.

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