

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 23 OF 2021
AND
CRIMINAL WRIT PETITION NO. 24 OF 2021**

V. G. QUENIM, A PROP. ...Petitioners
CONCERN, OF PRASAD KENI
AND 9 ORS

Versus

BANDEKAR BROS. PVT. LTD., ...Respondents
AND 2 ORS

Mr. Y. V. Nadkarni , *Advocate for the petitioners.*

Mr. Esperdiao Dias, *Advocate for the respondents.*

CORAM: MANISH PITALE, J.
DATED: 22nd September, 2021.

P.C.:

1. In both these petitions, the respondent Nos.1 and 2 had initiated complaints against the petitioners alleging that offences were committed by the petitioners under Sections 191 and 192 of the IPC, punishable under Section 195 thereof. Initially, the complaints were filed before the Sessions Court but the Sessions Court passed an order holding that such a complaint under Section 340 of the CrPC ought to be placed before the Court of Civil Judge Senior Division in which the offences were allegedly committed.

2. Accordingly, the complaints were returned back to be presented before the appropriate Court and that is how the two complaints came to be lodged in the Court of the Judicial Magistrate First Class at Bicholim.

3. It appears that thereafter the said complaints were sought to be converted into private complaints and an order to that effect was passed by the Court. This was the subject matter of challenge before the Sessions Court in revision applications. Such revision applications were allowed and the process issued on the converted complaints was set aside. The matter reached this Court and upon the challenge being negatived, ultimately the matter landed up before the Hon'ble Supreme Court in the form of Criminal Appeal Nos.546 to 550 of 2017.

4. By judgment and order dated 02/09/2020, the Hon'ble Supreme Court held as follows :

60. Writ petitions that were filed against this order have been dismissed by the impugned judgment. It seems to us that the baby and the bath-water have both been thrown out together. While it is correct to say that the order of conversion and issuing of the process thereafter on a private complaint may not be correct, yet the two complaints as originally filed can still be pursued. Once the Magistrate's order had been set aside, the learned Additional Sessions Judge ought to have relegated the parties to the position before the original complaints had been converted into private complaints. Since this has not been done, we find that

Shri Mishra is right in stating that even though allegedly serious offences have been made out under Sections 191 and 192 of the IPC, yet the complaints themselves have now been quashed. We, therefore, reinstate the two complaints in their original form so that they may be proceeded with further, following the drill of Sections 195 and 340 of the CrPC."

5. Accordingly, the original complaints filed under Section 340 of the CrPC stood revived and as per the above-quoted direction of the Hon'ble Supreme Court, the drill under Sections 195 and 340 of the CrPC was supposed to be undertaken.

6. But by the impugned notice, the Court of the Judicial Magistrate First Class at Bicholim has directly issued notice to the petitioners herein addressing them as the accused. The preliminary inquiry contemplated under Section 340(1) has not been undertaken by the aforesaid Court. The petitioners have taken exception to the issuance of such notice by the aforesaid Court. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Pritish v/s. State of Maharashtra and others** [(2002) 1 SCC 253], judgments of this Court in the case of **Pritish Ramrao v/s. State of Maharashtra** [2001 (1) Mh.L.J. 937] and in the case of **Santosh C. Shetty (Dr.) v/s. Ameeta S. Shetty** [2019(3) Bom.C.R. 141].

7. This Court issued notices in the present Writ Petition on 15/03/2021 for final disposal and observed that in the meantime,

as contemplated in the above-quoted order of the Hon'ble Supreme Court, the Magistrate may continue with the initial inquiry without the presence of the petitioners.

8. On receipt of notice, the respondents have appeared through Counsel. The learned Counsel appearing for the respondents has conceded to the position of law as manifested in the aforesaid judgments of the Hon'ble Supreme Court and this Court. It is conceded that such a notice could not have been issued directly addressing the petitioners as the accused, without first undertaking preliminary inquiry as contemplated under Section 340 of the CrPC.

9. In view of the above, the impugned notices dated 24/02/2001 are quashed and set aside.

10. Needless to say, the Court of the Magistrate may continue with the preliminary inquiry as contemplated under Section 340 (1) of the CrPC without the presence of the petitioners.

11. Writ petitions stand disposed of.

MANISH PITALE, J.