

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 231 OF 2019**

Mr. Govind Sawant, son of Mr. Vithal
Sawant, Indian National, major in
age, r/o Surla, Sancorda, Goa. Petitioner

Versus

1. Mr. Madhavrao Shivajirao
Dessai, s/o Shivajirao Dessai,
major, married, businessman,
r/o Surla, Sancorda, Goa.
2. Mrs. Shubhalaxmi Madhavrao
Dessai, w/o Mr. Madhavrao
Shivajirao Dessai, r/o Surla,
Sancorda, Goa.
3. Mr. Baburao Fatto Desai,
Bonsai, Curchorem, Goa. Respondents

Mr. Bhargav M. Khandeparkar, Advocate for the Petitioner.

Mr. Ashwin D. Bhobe, Advocate for Respondent No. 1.

Mr. Jatin Ramaiya, Advocate for Respondent No. 2.

Coram: M. S. JAWALKAR, J.

Reserved on: 22nd February 2021.

Pronounced on: 26th February 2021.

JUDGMENT:

Rule. Rule made returnable forthwith at the
request and with the consent of the learned Counsel for
the parties.

2. Heard Mr. Khandeparkar, the learned Counsel
for the petitioner, Mr. Bhobe, the learned Counsel for the

respondent no. 1 and Mr. Ramaiya, the learned Counsel for respondent no. 2.

3. The petitioner is the original complainant in Criminal Complaint No. 16/P/2007/B pending before the JMFC, Quepem. The complaint was filed against the respondents for offences punishable under Section 403, 405, 406, 409, 417, 419, 420, 463, 464, 465, 468, 471, 120A and 120B read with Section 34 of IPC.

4. The brief contentions of the petitioner is that the petitioner was carrying on transportation along with respondent no. 2 under the name and style of "M/s V&G Transport", which is a partnership firm. The financial transactions of the said firm were carried out in the name of the firm through three accounts. It is further contended that on 16.04.2004, respondent no. 1, who is the husband of respondent no. 2, in connivance with his wife created a bogus account with Goa State Co-operative Bank, Curchorem under the name and style of "V&G Transport", portraying it to be his proprietorship concern. Both the accused approached to Chowgule & Company Ltd. stating

that they are the authorized representative of the firm and under this pretext, collected seven cheques, which were payable to the petitioner-firm. The respondent no. 1 thereafter proceeded to credit and siphon out the said monies through his bogus account and thereby misappropriated monies to the tune of Rs.8,08,356/-. In view thereof, the petitioner filed private criminal complaint and a civil suit.

5. It is the contention of the petitioner that in the proceedings of the civil suit, the respondent no. 1 filed his W.S., wherein he categorically admitted that seven cheques were collected by him from Chowgule & Company Ltd. The civil suit eventually came to be decreed in favour of the petitioner and appeal by respondent no. 1 against the said judgment and decree is pending before the Appellate Court.

6. In criminal proceedings, examination in chief of the petitioner was completed on 12.04.2019 and he was cross examined until 17.09.2019. In cross examination, the copy of the plaint was shown to the petitioner and the

same was admitted and exhibited in evidence as Exhibit-220. After conclusion of cross examination, the petitioner filed an application seeking leave to rely on the plaint and W.S. After hearing the parties, the application of the petitioner was dismissed. The said application is under challenge under the present criminal writ petition.

7. The ground for challenge is that the order passed by the learned JMFC is perverse, specifically when the respondent no. 1 had already produced the plaint in the cross examination of the petitioner. The learned Magistrate failed to appreciate that the W.S. was necessary to prove the contradictions between the pleadings in the suit and the defence sought to be raised in the criminal proceedings. The Magistrate erred in holding that there was delay of 13 years in moving the application, specifically when, it becomes necessary only after the plaint was produced. The Magistrate failed to appreciate that the documents sought to be produced were certified copies of Court record and hence, prayed for setting aside the order of JMFC and allow the application of the petitioner seeking leave to rely on additional documents.

8. The learned Counsel for the petitioner also placed reliance on the decision of the Delhi High Court in the case of **Vipin Kumar Vs. State of Delhi & Others, 2017 0 Supreme (Del) 3866.**

9. The respondent no. 2 filed reply and opposed the application strongly. It is submitted that the order is well reasoned and justified in the facts and circumstances. The matter is pending for last 13 years and it is correctly held that no purpose would be served in case the application for production is allowed and correctly observed that grant of such application shall further delay the trial. Even otherwise, the respondent no. 2 was not a party to the suit and therefore, the written statement as sought to be produced cannot be used by the petitioner as against this respondent.

10. The learned Counsel for respondent no. 1, Mr. Ashwin D. Bhobe submitted that in the first place, the application filed before the Trial Court was not supported by any affidavit. There is no statement as to why these

documents, though in the possession and within the knowledge of the complainant, were not produced since 2012. It is further submitted that the complaint contains no purported documents. Thus, it has no linkage to the allegations made in the complaint. It is submitted that extra ordinary jurisdiction of this Court cannot be invoked unless the order passed by the Court is perverse and is passed in capricious manner. It is submitted that there is a well reasoned order and as such, the Petition is not maintainable.

11. Mr. Ramaiya, the learned Counsel for respondent no. 2 submitted that respondent no. 2 is not the party defendant in suit. There is delay of 13 years to apply for production of documents.

12. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents at length. It is not disputed that the civil suit was filed by the firm, M/s V&G Transport and not by the present petitioner. Moreover, accused nos. 2 and 3 are not parties to the said suit. It is also not the case of the petitioner that he was

not aware of W.S. filed in the said suit. If at all it was relevant, he ought to have produced the same on record at an earliest opportunity. It is already come on record that copy of the plaint is admitted and exhibited in the cross of the complainant. The only reason put forth for permission to produce W.S. is that as the copy of the plaint and W.S. are material documents have a direct bearing on the present complaint.

13. The learned Counsel for the petitioner relied on the citation **Vipin Kumar** (supra). The facts in the said matter are different from the one in the present matter as in the said matter before the Delhi High Court, the application for producing additional documents on record were allowed to be produced as those documents were not filed initially in the complaint as they were not available with the complainant at the time of filing of the complaint. Here the documents were within the knowledge of the complainant and were available with the complainant.

14. The Hon'ble Apex Court in **P. Chhaganlal Daga Vs. M. Sanjay Shaw, (2003) 11 SCC 486** has held thus:

“Even if evidence on both sides is closed and such jurisdiction of the Court is dictated by the exigency of the situation and fair play. The only factor which should govern the Court in exercise of powers under Section 311 should be whether such material is essential for the just decision of the case. Even a reading of Section 311 of the Code would show that Parliament has studded the said provision lavishly with the word “any” at different places. This would also indicate the widest range of power conferred on the court in that matter.”

15. There is no error or illegality in the order passed by the learned JMFC. The only factor which should govern the Court in exercise of powers under Section 311 of Cr.P.C. should be whether such material is essential for the just decision of the case. It is also rightly observed by the learned JMFC that there was no explanation given as to the relevancy of the documents to the complaint. The complainant has not given any reference of the said suit in the complaint. Apart from this, evidence required in a criminal matter is different from the evidence required in civil cases. The complainant has to prove his case beyond reasonable doubt on its own. The learned Trial Court,

therefore, rightly rejected the application. Hence, there is no merit in the Petition and it is liable to be dismissed. Accordingly, I proceed to pass the following order:

O R D E R

- (i) The Petition is dismissed.
- (ii) Rule is discharged. No order as to cost.

M. S. JAWALKAR, J.

EV

VAIGANKAR
ESHA SAINATH

Digitally signed by
VAIGANKAR ESHA SAINATH
Date: 2021.03.01 16:00:45
+05'30'