Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 104 OF 2023
WITH
CRIMINAL WRIT PETITION NO. 82 OF 2023

CRIMINAL WRIT PETITION NO. 104 OF 2023

M/s. Marina Resorts Pvt. Ltd.,
North Goa, Through its Director
Mr. Rishi Dandona, S/o Late Prince
Dandona, having Office at Office No. 7,
Shantivanam Manuel Gonsalves Road,
Bandra Mumbai 400050 .....PETITIONER

V/S

1. Officer-in-Charge/Police Inspector,
Crime Branch, Ribandar, Goa.

2. Mr. Antonio Trinadad, major in
age, Presently residing at Devashri
Splendor, Block A, Flat No. 001,
Varsha Colony, Alto Porvorim,
Bardez, Goa.
Permanent Address;
Managing Director, Jatoyah Investments
and Holding Pvt. Ltd., Mumbai
Maharashtra.

3.M/s Jatoyah Investments and Holding
Pvt. Ltd. through its Managing Director/
Principal Officer, Having office at 'A' wing,
207/208, St. John's Road, Pali Hill,
Bandra (W), Mumbai 400 050.

4. The Goa Urban Co-operative Bank Ltd.,
office at Dr. Atmaram Borkar Road, Panaji
Goa-403001, represented by its Managing
Director, Mr. Gopalkrishna Yeshwant Nayak,
Major in age, Son of Yeshwant Nayak,
having office at Dr. Atmaram Borkar Road, Panaji
Goa-403001 ….RESPONDENTS

Mr. Sachin Desai with Ms. Prachi Sawant, Advocates for the Petitioner.

Mr. A.D. Bhobe with Ms. A. Fernandes, Advocates for Respondent No. 4.

Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondent No. 1-State

Mr. V. Braganza with Mr. Vilas Pavithran, Advocates for the Respondent Nos. 2 and 3.

WITH

CRIMINAL WRIT PETITION NO. 82 OF 2023

1. The Goa Urban Co-operative Bank Ltd.,
office at Dr. Atmaram Borkar Road, Panaji
Goa-403001, represented by its Managing
Director, Mr. Gopalkrishna Yeshwant Nayak,
62 years of age, Son of Yeshwant Nayak,
having office at Dr. Atmaram Borkar Road,
Panaji, Goa-403001
E-mail: gucbank@sancharnet.in

2. Mr. Gopalkrishna Yeshwant Nayak,
62 years of age, The Managing Director,
The Goa Urban Co-operative Bank Ltd.,
Having office at Dr. Atmaram Borkar Road,
Panaji, Goa – 403001.

3. Mrs. Sandya Palekar, 57 years of age,
The Recovery Officer, The Goa Urban
Co-operative Bank Ltd., Having office at
Dr. Atmaram Borkar Road,
Panaji, Goa- 403001 …..PETITIONERS

VERSUS

1. Officer-in-Charge/
Police Inspector, Crime Branch,
Ribandar, Goa.

2. Mr. Antonio Trinadad, major in
age, Presently residing at Devashri
Splendor, Block A, Flat No. 001,
Varsha Colony, Alto Porvorim,
Bardez, Goa.
ermanent Address;
Managing Director, Jatoyah Investments
and Holding Pvt. Ltd., Mumbai
Maharashtra.

3.M/s Jatoyah Investments and Holding
Pvt. Ltd. through its Managing Director/
Principal Officer, Having office at 'A' wing,
207/208, St. John's Road, Pali Hill,
Bandra (W), Mumbai 400 050.

4. M/s. Marina Resorts Pvt. Ltd.,
North Goa, Through its Managing
Director/ Principal Officer,
Having Office at Office No. 7,
Shantivanam Manuel Gonsalves Road,
Bandra, Mumbai 400050 ….RESPONDENTS

Mr. A.D. Bhobe with Ms. A. Fernandes, Advocates for Petitioners

Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondent No. 1- State

Mr. V. Braganza with Mr. Vilas Pavithran, Advocates for the Respondent Nos. 2 and 3.

Mr. Sachin Desai with Ms. Prachi Sawant, Advocates for the Respondent No. 4.

CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.
RESERVED ON: 06th November, 2023

PRONOUNCED ON: 09th November, 2023

JUDGMENT (Per Bharat P. Deshpande, J.)

1. Both these petitions are taken together as the Petitioners are challenging FIR bearing crime no. 74/2023 registered by the Porvorim Police Station against them for the offences punishable under Sections 403, 406, 409, 420 r/w 341 of Indian Penal Code, on a complaint lodged by the Informant/Antonio Trinadad, Respondent No. 2 in both the petitions. The Petitioners in both these matters are the accused.

2. Rule. The rule is made returnable forthwith. Heard with consent for final disposal.

3. Criminal Writ Petition No. 104/2023 is filed by the Petitioner through its Director Mr. Rishi Dandona. The FIR vide crime no.

74/2023 was registered on 03.07.2023, on the directions from the Superintendent of Police, North Goa, Porvorim.

4. It is the case of the Petitioner that the Petitioner executed an agreement with Respondent No. 2 and 3 on 23.11.1994 for the purpose of transfer of 4,51,000 equity shares of the Petitioner for a total sum of Rs. 4,01,00,000/- (Rupees Four Crores One Lakhs only) of which an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) was paid at the time of execution of agreement by Respondent No. 3 and a sum of Rs. 3,91,00,000/- (Rupees Three Crores and Ninety One Lakhs only) was to be paid on or before 28.02.1995. Since Respondents No. 2 and 3 failed to pay the balance amount, the earlier Director of the Petitioner forwarded reminder stating that only an amount of Rs.1,03,72,579/- (Rupees One Crore, Three Lakhs, Seventy Two Thousand Five Hundred and Seventy Nine only) was received by the Petitioner out of the remaining agreed amount. During the telephone conversation, Respondent No. 2 and 3 were called upon to pay the balance amount. Since there was no further payment, a notice of termination of the agreement was issued on 23.01.1996.

5. Respondent No. 2 and 3 filed a Criminal complaint against the deceased Director of the Petitioner before the Commissioner of Police in Mumbai. Since no FIR was registered, an application was filed by the Respondent No. 2 and 3 under 156(3) Cr.P.C. before the Chief Metropolitan Magistrate Mumbai which was registered as Criminal Case No. 319/Misc./96. The Additional Chief Metropolitan Magistrate dismissed the said complaint vide Order dated 22.02.1999.

6. Thereafter, on 24.09.1996, Respondent No. 2 and 3 filed a Civil Suit for specific performance of the agreement dated 24.11.1994 with the Civil Court at Mapusa. Vide a Conditional Order dated 24.09.1996, and the Civil Court directed Respondent No. 2 and 3 to deposit a sum of Rs.2,51,11,107/- (Rupees Two Crores Fifty-One Lakhs Eleven Thousand and Hundred and Seven only) within a period of one month. Respondents No. 2 and 3 sought an extension of 30 days to deposit, which was also granted. Thereafter, this Court granted another extension to Respondent No. 2 and 3 to deposit an amount mentioned in the Civil Court's Order till 08.11.1996. Respondents No. 2 and 3 then filed a Special Leave Petition before the Supreme Court seeking a further extension, and the Supreme Court extended the time to pay the amount till November 1996.

However, Respondent No. 2 and 3 failed to deposit the said amount of Rs.2,51,11,107/- (Rupees Two Crores Fifty-One Lakhs Eleven Thousand and Hundred and Seven only) within the extended period.

7. It is further the case of the Petitioner that as per the Order of the Civil Court Mapusa, Petitioner deposited an amount of Rs.1,01,72950/-(Rupees One Crore One Lakh Seventy Two Thousand Nine Hundred and Fifty only) and accordingly was entitled to run the Hotel Paradise existing at Village Calangute.

8. It is further the case of the Petitioner that in the meantime Respondent No. 2 and 3 approached the Sessions Court in Mumbai vide Criminal Writ Petition No. 239/1999 challenging the Order of the Additional Chief Metropolitan Magistrate dismissing their application. The Sessions Court allowed the said revision and directed the Trial Court to issue the process. The Trial Court took cognisance and issued a process. The earlier director of the Petitioner then filed an application for discharge/recall of the process, which the Metropolitan Magistrate rejected. The Revision filed against it was also rejected by the Sessions Court. Accordingly, the earlier Director of the Petitioner approached the High Court of Bombay(Principal Bench) by filing a Criminal Writ Petition No. 1081/2008. The High

Court granted interim relief and stayed the proceedings pending before the Metropolitan Magistrate. The said petition is still pending at the Principal Bench.

9. It is further the case of the Petitioner that subsequently, Respondent No. 2 and 3 filed some complaints in the year 2017 in Goa. However, the Panaji Police did not register any complaint, considering that the dispute was purely Civil dispute. This was not challenged or questioned by Respondents 2&3. Respondents No. 2 and 3 kept quiet for five years, and suddenly, in April 2023, they again approached Porvorim Police Station by filing their complaint alleging cheating against the Petitioner and Bank Officials. The Porvorim Police again refused to register the offence.

10. However, Respondent No. 2 and 3 then approached the Superintendent of Police, North Goa, by their complaint dated 29.04.2023. The Superintendent of Police, North Goa, without considering the earlier Orders or the background, by a cryptic note, directed Porvorim Police Station to register the above offences.

11. The Petitioners in Criminal Writ Petition No. 82/2023 are the Managing Director and the Recovery Officer of the Bank. This Petition is directed against the FIR vide crime no. 74 of 2023 registered on 03.07.2023 on the basis of a complaint filed by Respondent No.2 and 3 dated 29.04.2023 on the cryptic directions of the Superintendent of Police, North Goa Porvorim. The complaint lodged by the Respondent No.2 and 3 against the Petitioners in both these matters is the same. Even the facts are similar except for the fact that in the present petition, Petitioners are a Co-operative Bank, Managing Director and the Recovery Officer.

12. Heard Mr. Sachin Desai with Ms. Prachi Sawant, Advocates for the Petitioner in WPCR 104/2023, Mr. A. D. Bhobe with Ms. A. Fernandes, Advocates for Petitioner in WPCR. 82/2023 and for Respondent No. 4 in WPCR. 10/2023, Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondent-State and Mr. V. Braganza with Mr Vilas Pavithran, Advocates for the Respondent Nos. 2 and 3.

13. Mr. Sachin Dessai and Mr. A. D. Bhobe, appearing for the Petitioners in both these matters, strongly contended that lodging an FIR by suppressing material facts is an abuse of the process of law. Both the learned Counsels have pointed out that the entire dispute is purely civil in nature and that a Civil Suit was already filed by Respondent Nos.2 and 3 in the year 1994 itself, which is still pending with the Mapusa Court. It was further submitted that in the said

Civil Suit, a conditional order was passed directing Respondent No. 2 and 3 to deposit more than 2 Crores within a period of one month. This time was extended by the Civil Court, then by this Court and finally by the Supreme Court till November 1996. However, Respondents No. 2 and 3 failed to deposit such an amount. Thereafter, the Petitioners in Writ Petition No.104 of 2023 deposited an amount of Rs. 1,01,72,950/-(Rupees One Crore One Lakh Seventy-two Thousand Nine Hundred Fifty only), as per the order dated 24.09.1996 passed by the Civil Court and became entitled to run the Hotel Paradise Village Beach Resort at Calangute. Similarly, documents which were mortgaged with the Bank were also released to them.

14. However Respondent Nos. 2 and 3 clandestinely filed a criminal case against the earlier Director of the Petitioner in Criminal Writ Petition No.104 of 2023, on 18.07.1996 for various offences, before the Deputy Commissioner of Police, Zone-8, Mumbai. Since this complaint was not registered, they approached the Metropolitan Magistrate by filing proceedings under Section 156 (3) of the Criminal Procedure Code. On 22.02.1999, the Additional Chief Metropolitan Magistrate dismissed the complaint filed by Respondent

Nos. 2 and 3. The revision application was filed challenging the order of the Metropolitan Magistrate, and the Revisional Court set aside such order and directed the Metropolitan Magistrate to issue the process. Accordingly, in October 2001, the Metropolitan Magistrate issued a process against the Petitioners. The application was filed for discharge/recall which the Magistrate rejected. Revision filed against it was also rejected by the Sessions Court. Accordingly, the Petitioners approached the High Court of Bombay (Principal Bench) by filing Criminal Writ Petition No. 1081 of 2008. In that petition, the proceedings before the Magistrate are stayed.

15. Both the learned Counsels have further submitted that somewhere in October 2017, Respondent Nos lodged one more complaint. 2 and 3, with P.I. Panaji Town Police Station for cheating and fraud by Goa Urban Co-operative Bank. Panaji Police, vide letter dated 7.11.2017, informed Respondent Nos. 2 and 3 that no cognisable offence is made out.

16. Both the learned counsels further submitted that somewhere in April 2023, the third complaint was filed by Respondent Nos. 2 and 3 before Porvorim Police Station, making the same allegations against the Petitioners. Since no offence was registered, Respondents addressed a letter to the Superintendent of Police, North Goa. Superintendent of Police vide a cryptic note directed Porvorim Police Station to register FIR, and accordingly, on 03.07.2023, the present FIR was registered against the Petitioners.

17. The learned Counsel for the Petitioners would then submit that Respondent Nos. 2 and 3 have suppressed many facts while filing the present complaint at Porvorim Police Station, and such complaint is filed only to wreak vengeance, to pressurise the Petitioners, and take revenge. It is their contention that the Civil Court at Mapusa passed conditional order thereby granting opportunity to Respondent Nos. 2 and 3 to deposit the amount and to collect the documents from the Bank as well as operate the Hotel. Inspite of extension of time, Respondent Nos. 2 and 3 failed to deposit such amount. By the same order passed by the Civil Court, the Petitioners in Writ Petition No.104 of 2023 were allowed to deposit the balance amount and to carry out the business of the Hotel.

18. Both learned Counsels would further submit that when cognisance is already taken of the same offence before the Metropolitan Magistrate, there is no question of registering another FIR in Goa. The Respondents suppressed this fact, and the motive is evident, which is to harass and pressurise the Respondents to come to terms in a civil matter. It is their contention that continuing such FIR and investigation is an abuse of the process of law and, therefore, needs to be quashed and set aside.

19. Shri Vaze learned Additional Public Prosecutor submitted that the FIR was registered because the Superintendent of Police issued directions to register the offence. However, Mr Vaze was unable to point out on what basis the learned Superintendent of Police considered that cognisable offence is made out after producing the complaint dated 29.04.2023.

20. Mr. V. Braganza, appearing for Respondent Nos. 2 and 3 claimed that the proceedings have been properly instituted on the basis of complaint lodged by Respondent Nos. 2 and 3 and no interference against it at this stage is necessary. According to him there is a need for investigation to unearth the offences. He submits that an earlier complaint was lodged by Respondent Nos. 2 and 3 but not registered. However, he submitted that though Respondents 2 and 3 may not have disclosed all facts, it was not as if there was any suppression of facts. He submits that the complaint dated 29.04.2023 only discloses the facts constituting relevant offences.

21. The rival contentions now fall for our determination.

22. This is a classic case of abuse of the process of law and how First Information Reports are registered in purely civil disputes so as to give a purely civil dispute the colour of a criminal dispute. The documents placed on record in both these petitions would clearly go to show that there was some agreement executed between Marina Resorts Private Limited and Respondent Nos. 2 and 3 on 23.11.1994. Such an agreement was for the transfer of 4,51,000 equity shares of Marina Resorts Private Limited in favour of Respondent Nos. 2 and 3 for a sum of Rs.4,01,00,000/-(Rupees Four Crores One Lakhs only). Some part payment was made by Respondent no. 2 and 3. Since dispute arose between the said parties, the notice of termination of said agreement was issued on 23.01.1996. Respondent Nos. 2 and 3 then filed a Civil Suit on 24.09.1996 for specific performance of agreement dated 24.11.1994 before the Civil Court of Mapusa. An injunction application was also filed with the said suit.

23. The undisputed record bears out that vide order dated 24.09.1996, the Civil Court in Mapusa passed a conditional order, the operative part of it at para 64 reads thus:

> *"Therefore considering the circumstances and interest of justice the ex-parte order is confirmed and the application for injunction as prayed is granted, pending the decision of the suit on the condition that they deposited in the Court a sum of Rs.2,51,11,107/- within one month from the date of this order. If the plaintiffs fail to deposit the amount in time the injunction application shall stand dismissed and ex-parte order is vacated and the defendant nos. 1 and 2 would be entitled to run the business of the hotel at Calangute by depositing in the Court the admitted sum of Rs.1,01,72,950/- within one month of the expiry of the time limit given to the plaintiffs".*

24. The Respondent Nos. 2 and 3 then approached this Court somewhere on 17th October 1996, and they were granted an extension of time to deposit the amount mentioned in the Civil Court's order. The other part of the said order was not disturbed. Respondent no. 2 then filed a Special Leave to Appeal No. 21875/1996 before the Supreme Court. The Supreme Court extended the time till the end of November 1996 for depositing the amount. However, Respondent Nos. 2 and 3 failed to deposit the said amount. Accordingly, Marina Resorts, through its Director, deposited Rs.1,01,72950/- (Rupees One Crore One Lakh Seventy Two Thousand Nine Hundred and Fifty Only) on 26.12.1996.

25. After Respondent Nos. 2 and 3 failed to obtain favourable orders from the civil court or failed to deposit the amount directed by the civil court, even after securing extensions, they filed the complaint before the Metropolitan Magistrate at Mumbai. The title of this application, which is produced on page no. 139 of Criminal Writ Petition No. 104/2023 shows that it is an application cum complaint with the prayer to send the present complaint to the Deputy Commissioner of Police, Zone-8, for investigation and report under section 156(3) of the Criminal Procedure Code.

26. A perusal of the complaint shows that the Complainant/ Respondent Nos. 2 and 3 claimed to be cheated with regard to the shares and also the title deeds of the said Hotel by the present Petitioners. Even against the bank officials it is claimed that it was impressed upon the Complainant/ Respondent Nos. 2 and 3 that title deeds are with the bank and they agreed to hand over it to Respondent Nos. 2 and 3. It is their contention that they paid substantial amount but the bank officials thereafter stated that title deeds were already handed over to Director of Marina Resorts. The said complaint filed in the year 1996 before the Metropolitan Magistrate in Mumbai and the present complaint lodged with the Porvorim Police Station in the year 2023 is regarding the same incident.

27. The Additional Chief Metropolitan Magistrate, vide its order dated 22.02.1999, dismissed the said complaint on the ground that the dispute is purely of a civil nature. In Revision, the matter was remanded, and the magistrate then issued a process. Criminal Writ Petition No. 1081 of 2008 filed before the Principal Bench of this Court shows that on 31.07.2009, an ad-interim stay was granted to the order of the magistrate.

28. The Petitioner has produced the copy of the complaint lodged by Respondent Nos. 2 and 3 dated 12.10.2017 with Panaji Police Station, which is on page no.175. The contents of the said complaint are similar to the one which is filed in the year 2023 with Porvorim Police Station. The P.I. of Panaji

Police Station informed the Office of SDPO Panaji vide their letter dated 7.11.2017 as under:

> *To,*
> *The Sub-Divisional Police Officer,*
> *Panaji Goa.*
> *Sub:- Enquiry of petition of Antonio Trindade Ref:- SDPO/PAN/SA-653/2017 dated 16.10.2017*
> *Sir,*
> *With reference to the above, it is submitted that necessary enquiries have been conducted into the above petition.*
> *It is further submitted that after going through the contents of the petition no cognizable offence is made out and accordingly applicant informed to approach proper court of law for redressal and complaint.*
> *I am enclosing herewith copy of petition for your kind perusal please.*
> *Yours Faithfully*
> *sd/-*
> *Police Inspector*
> *Panaji Police Station*

29. Thus, it is clear from the above document that even Panaji Police observed that no cognisable offence is made in the complaint filed by Respondent Nos. 2 and 3 dated

12.10.2017. Accordingly, Respondent Nos. 2 and 3 were directed to approach the proper Court of Law for redressal of the complaint. Incidentally, in the 2017 complaint, all facts concerning the Mumbai proceedings or the civil proceedings were conveniently suppressed.

30. Mr. Braganza when questioned about the proceedings being filed before the Metropolitan Magistrate at Mumbai in connection with the same offences, was unable to explain. Similarly, he was unable to justify the non-disclosure of the pendency of civil proceedings and orders passed therein in the year 1996 itself by Mapusa Civil Court and the failure of Respondent Nos. 2 and 3 to deposit the amount for collecting the documents and for running the hotel.

31. Mr Vaze learned Additional Public Prosecutor submitted that the Panaji Police did not even consider registering it as a non-cognizable case, and therefore, there was no question of directing the Complainant/Respondent Nos. 2 and 3 to approach any Magistrate. He submits that the direction was to approach the Court as it was a case of purely civil in nature.

32. With this background, Respondent Nos. 2 and 3 again, after almost six years, approached Porvorim Police Station by filing their complaint dated 29.04.2023. In reply/affidavit filed by P.I. Crime Branch Police Station, Ribandar, he produced the note of the Sub-divisional Police Official Porvorim and that of Superintendent of Police, North Goa. These notings are produced at Page no.191, the SDPO Porvorim clearly recorded that P.I. Panaji has already conducted preliminary enquiry in the matter. Thus, it shows that the SDPO and Porvorim Police Station were clearly aware that earlier in the year 2017 Panaji Police refused to register similar complaint on the ground that it was a civil dispute. However, the note put up by Superintendent of Police, North Goa reads thus :-

> *"Present complaint requires detailed investigation. Prima facie an offence is made out. We may register the case and transfer it to crime branch for investigation. Submitted please".*

33. The contents of the complaint dated 29.04.2023 filed with

Superintendent of Police, North Goa Porvorim, reads thus:-

29th April 2023

To,
The Superintendent of Police,
North Goa, Porvorim,
Bardez Goa.

Subject: Cheating and Fraud by Goa Urban Co-operative Bank Ltd., under section 403,406,409,420 rw 34 of IPC.

Dear Sir,

I the undersigned is the Managing Director of Jatoyah Investments & Holdings Ltd, having its registered office in Mumbai, and residing at Devashri Splendor, Block A, flat no 001, Varsha Colony, Alto Porvorim, Bardez, Goa.

Cause of action is in Goa. I wish to file a cheating case against the Goa Urban Co-operative Bank Ltd. against its officers i.e. The Managing Director, The General Manager, and the Recovery Officer for inducing our company to pay the outstanding dues of Marina Resorts Pvt. Ltd. who are running a beach resort in the name and style of Paradise Village beach resort, at Tival Vaddo, Calangute, Bardez Goa, by falsely representing to our company that on payment of the outstanding dues both principal and interest of Marina Resorts Pvt. Ltd. which is Rupees 28,72,579(Twenty Eight Lakhs Seventy Two Thousand Five Hundred and Seventy Nine) the Original (mortgaged) documents will be handed over to us or our advocate Mr G.G. Kamat.

This was also confirmed in writing by the Chairman of Marina Resorts Pvt. Ltd. vide its letter dated 1st August

1995, and same acknowledged by the bank on receiving the full payment on 3rd August 1995.

However after receiving the full outstanding amount of Principal and interest from our Company, the Goa Urban Co-operative Bank Ltd., by their letter dated 5th August 1995 stated that the Original (mortgage) documents are not in their possession as the same was directly collected by them i.e. Marina Resorts Pvt. Ltd.

This is an act of cheating, and is a cognisable offence, knowing fully well that the documents are not with them and still they collected the outstanding dues from us.

The Bank was asked by our Company to return the money but they refused to do so stating that they will look into the matter and have the documents handed over to us, but instead the bank alongwith the Chairman of Marina Resorts Pvt. Ltd who were in collusion, would have goons visiting our residence intimidating my wife about kidnapping our children and with dire consequences if we approach the bank again.

We have proof of the same, reporting the matter to the Police Commissioner of Mumbai and the Mapusa Court who were kind enough to give us Police Protection.

We are attaching relevant documents and can further provide additional documents as and when called upon to do so.

Sir, we request you to register a case and file an F.I.R. under sections 403,409, 420 rw section 34 of IPC against the concerned officers of the Bank and Directors of Marina Resorts Pvt. Ltd.

The question is why are we approaching the Police now, we were frightened for our lives, however following up the matter in court. We approached the police at Panjim, with a copy to your office in the year 2017 and in 2021 after filing an R.T.I. we were informed by the Panjim Police, that there is no cognisable offence and we were informed to approach the proper court of law.

This is totally in correct, cheating is a cognisable offence, and it is covered under the sections mentioned above.

For this act of kindness, we will be obliged if a F.I.R. be filed at your earliest.

Thanking You.

Yours Truly,
sd/-
Antonio M. Trindade
Managing Director

34. The complaint dated 29.04.2023 quoted above shows that Respondent Nos. 2 and 3 suppressed the material facts that the Metropolitan Magistrate had already taken cognisance of the same complaint and even issued process. Similarly, the said complaint clearly suppressed the pendency of the Civil Suit in Mapusa and the interim orders passed therein.

35. We are unable to accept that the complaint dated 29.04.2023 is disclosing the ingredients of the offences punishable under Sections 403, 406, 409 and 420 of the Indian Penal Code. This is a case wherein Respondent Nos. 2 and 3 by suppressing material facts and more particularly about cognisance taken by the Metropolitan Magistrate of the same offence, succeeded in registering another FIR in Goa. This clearly amounts to abuse of the process of law. It is also evident from such conduct that a complaint was lodged only to pressurise the Petitioners in connection with civil proceedings pending at Mapusa. Besides this, it is evident that the attempt to file such complaint is to take revenge on the Petitioners. This further shows vindictive approach on the part of Respondent Nos. 2 and 3.

36. The learned Counsel Shri Braganza, appearing for Respondent Nos. 2 and 3 failed to justify such conduct on the part of Respondent Nos. 2 and 3. Even he was unable to defend the conduct of Respondent Nos. 2 and 3 in connection with the suppression of the material facts from Goa Police while filing the present complaint. Therefore, the principles laid down by the Apex Court in the case of ***M/s Neeharika Infrastructure Pvt. Ltd. V/S State of Maharashtra and others*** reported in ***2021 SCC Online SC 315*** and ***State of Haryana and Ors. V/s Ch. Bhajan Lal*** reported in ***992 Supp(1)SCC 335*** are clearly applicable. Registering an FIR in such circumstances, and that too against bank officials, is clearly an abuse of process of law. We also feel that by suppressing material facts, Respondent Nos. 2 and 3 managed to register FIR in Goa, even though cognisance of it is already taken by the Metropolitan Magistrate in Mumbai. In such circumstances, we are of the opinion that Respondent Nos. 2 and 3 must compensate for filing such proceedings in Goa only with the intention to harass the Petitioner, who are already arrayed as accused before the Metropolitan Magistrate of Mumbai though the Principal Bench of this Court stays such matter. However, the fact remains that the matter before the Metropolitan Magistrate is still pending.

37. We therefore allow both these petitions and quash and set aside FIR No. 74/23 dated 03.07.2023 registered by

Respondent No. 1. Respondent Nos. 2 and 3 are directed to pay cost of Rs.25,000/- each to the Petitioner in Writ Petition No.104/2023 within a period of 15 days and further cost of Rs.25,000/- each to the Petitioner in the Writ Petition No. 82/2023 within a period of 15 days.

38. The petition stands disposed of on the above terms. The rule is made absolute in the above terms in both these Petitions.

BHARAT P. DESHPANDE, J. M.S. SONAK, J.