

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 5 OF 2022**

1. Mr. Zeeshan Kadar,
aged about 40 years, son of Mr
Alam Kardar, business presently
Residing at Flat No.4, Building No.4,
Prudential Palms, Porvorim, Goa.

2.)Mr. Randhir Thakur,
aged about 38 years, son of
Mr. Markandey, business, presently residing at
Flat No. 2, E building, Sapna Habitat,
Porvrim-Goa

... Petitioners.

Versus

1.) State of Goa, through the Calangute Police
Station, Calangute, Bardez - Goa.

2) Mrs. Kamalpreet Kaur, major in age,
business, presently residing at
HNo. 4, 5. 6, PK Palace, Bhoomi City,
Maharashtra.

3) Ld. Public Prosecutor, having its office at
High Court of Bombay at Porvorim -Goa ...Respondents.

**Mr Nilesh Takkekar, with Mr Sairaj Bhaje, Advocates
for the Petitioners.**

**Mr S.G. Bhohe, Public Prosecutor for the State-
Respondent No.1.**

**Mr Rohan Desai, with Ms Prachi Sawant, Advocates for
Respondent No. 2.**

**CORAM : M. S. SONAK &
VALMIKI SA MENZES, JJ.**

DATE : 5th April 2023

ORAL JUDGMENT : (Per M.S. Sonak, J.)

1. Heard the learned Counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties. Even otherwise, while issuing notice to the Respondents on 29/3/2022, we had clarified that an endeavour would be made to dispose of this Petition finally at the stage of admission given the Judgment and Order dated 02/08/2021 in Criminal Writ Petition No. 17/2020.
3. This Petition is for quashing the FIR bearing No. 144/2019 and the consequent Charge-sheet bearing No. 206/2019 dated 15/4/2019 on the file of the learned Chief Judicial Magistrate at Panaji, Goa. In terms of the impugned FIR and the Charge-sheet, the Petitioners have been charged with the offences under Sections 406 and 420, read with Section 34 of the Indian Penal Code (IPC).
4. Mr Takkekar, learned Counsel for the Petitioners, submits that the issue raised in this Petition is entirely covered by this Court's decision dated 02/08/2021 in Criminal Writ Petition No. 17/2020. He points out that this Petition was instituted by Rishi Gupta (Accused No.1), and this Court, after recording

finding that the allegations in the impugned FIR and the Charge-sheet, even if taken at their face value, do not spell out the ingredients of Sections 406, 420 read with Section 34 of the IPC. Accordingly, he submits no distinction between Rishi Gupta and the Petitioners' position. Therefore, based upon the reasoning in our decision dated 02/08/2021, the impugned FIR and the Charge-sheet must be quashed.

5. Mr Takkekar submits that the impugned FIR and the Charge-sheet suggest that the matter has a predominantly civil profile. The criminal Prosecution was launched only to pressurise the Petitioners into settling the civil disputes. Mr Takkekar submits that launching such a criminal prosecution is an abuse of the process.

6. Mr Takkekar relies on *State of Haryana v/s. Bhajan Lal* (1992) Supp (1) SCC 335, *International Advanced Research Centre For Powder Metallurgy And New Materials (Arch) And Others v/s. Nimra Cerglass Technics Private Limited And Another* (2016) 1 SCC 348 and *Anand Kumar Mohatta vs. State (Govt of Nct of Delhi)* (2019) 11 SCC 706 to support his contentions.

7. Mr Bhobe learned Public Prosecutor submits that the Petitioner's case does appear to be covered by this Court's

decision dated 02/08/2021 and, therefore, similar orders could be made in this Petition.

8. However, Mr Rohan Desai learned Counsel for Respondent No.2 (Complainant), submits that this Petition may not be entertained now that the Charge-sheet is already filed against the Petitioners. He offers that the Petitioners could be granted liberty to argue before framing charges. He submits that the present Petition may not be entertained on the grounds of such alternate remedy.

9. Mr Desai, without prejudice to the above contention, submits that Respondent No. 2 was induced to part with an amount of ₹76.50 lakhs on the promise that she would be made a partner in a restaurant business. Mr Desai submits that if read in its entirety, the complaint discloses the commission of offences under Sections 406, 420, read with Section 34 of the IPC. Therefore, he submits that no case is made out for quashing the impugned FIR or the Charge-sheet.

10. Mr Desai submits that there is a difference between the role played by the Petitioners and by Rishi Gupta. He, therefore, proposes that this Court's decision dated 02/08/2021 is distinguishable.

11. For all the above reasons, Mr Desai submits that this Petition may be dismissed, with costs.

12. The rival contentions now fall for our determination.

13. The impugned FIR states that Rishi Gupta (Petitioner in Writ Petition No.17/2020), Zeeshan Kadar, Randhir Thakur (Petitioners) and Ms Shabnam Shaik, with common intention, induced Respondent No.2 to invest her money in their hotel business on the pretext of making her a partner. Still, they neither made Respondent No.2 a partner nor returned the amount of ₹76.50 lakhs she invested. Hence, it was alleged that all four accused persons had committed offences under Sections 406, 420 read with Section 34 of the IPC.

14. Based on the impugned FIR, the impugned Charge-sheet was filed against the four accused persons stating the following

"16. BRIEF FACTS OF THE CASE (Add separate sheet, if necessary)

MAY IT PLEASE YOUR HONOUR

In the limits of your Honourable Court and within the jurisdiction of Calangute Police Station that prior to 15.04.2019 at La Habbana Resort, Sautawado, Calangute Bardez Goa, accused mentioned at Column No.11 at Sr. No. A-1, A-2 & A-3 with their common intention induced the complainant to invest money in their hotel business on pretext of making her a partner into their hotel business, as such complainant invested sum of Rs. 76,50,000/- (Seventy Six lakhs fifty thousand only) and further the above mentioned accused failed to admit the complainant as a

partner in their hotel business, thereby committed criminal breach of trust and cheated the complainant to the tune of Rs. 76,50,000/-.

Thus the accused persons mentioned at Column No. 11 at Sr. No. A-1, A-2 & A-3 have committed the offence punishable under sec 406, 420 r/w 34 IPC."

15. Since the impugned FIR and the impugned Charge-sheet are entirely based upon Respondent No. 2's complaint dated 15/06/2019, the same is transcribed below for the convenience of reference :

*"To, Inspector of Police / Police Officer in Charge,
Calangute-Bardez Police Station, Goa.*

Subject: Complaint against the accused persons namely, Rishi Gupta, Randhir Thakur, Zeeshan Shaikh, Mrs. Shabnam Shaikh has committed an offence IPC U/section 347, 350, 352, 420, 406 R/W 34.

Dear Sir/Madam,

1) I, Mrs. Kamalpreet Kaur Kohli, residing at the address mention as above, having a hotel restaurant namely Patiala Blu Fine Dine at Thane, Maharashtra. My earning and source of income is from hotel and restaurant I am doing the business from last many years as I also take a contract for management of hotel and services.

2) So, sir these above mentioned accused had approached me for partnership of the restaurant to run the restaurant in the equation of ratio will be 50:50. I later on respond positively to them and I had come to visit the said premises which was situated in Goa for running the restaurant along with my husband. We had discussed at Goa premises and confirmed the same ratio only after seeing the said

documents i.e 1) Registration Certificate 2) No objection Certificate 3) Department of Excise 4) Food registration 5) Bill of the company. Exhibit-A

3) I had started my business and brought my EDC machine from Thane because the partners insisted me if you want to take the additional service of food and beverages then you have to bring your EDC machine from your hotel in Thane, I agreed for the same. They also informed me that we do not have the EDC machine with our restaurant and you completely handle the restaurant of food and beverages as I started my business from time to time. Exhibit-B

4) Sir later I had been informed that as per your beverages income you will invest money you will invest money for partnership. For running rooms and maintenance in ratio of 50:50 I also agreed for the same with the trust I had proceeded with my EDC machine and account I had made the payments to my partners from account of Axis Bank Ltd. Exhibit-C

5) Sir I was added in their group and our conversation as per the WhatsApp has been recorded with expenses, expenditure, sales and etc. Exhibit-D

6) So sir they had also furnished me the expenditure list to my mail which all partners has to decide. After approval of the partners we use to rely on the same statement. We also use to discuss about future development of sale and proceed with the business. As we use to chat for the same expenses as per the WhatsApp group. ExhibitE

7) So sir as per the whatsapp group they also use to inform my husband on WhatsApp group about the bills, liabilities, expenditure and all expenses towards the expenditure of the hotel. These all WhatsApp chats use to come on my

husband's mobile as me and my husband were jointly working at the same premises. All WhatsApp chats, mails of beverages my husband was handling with my and my partners consent. Exhibit-F

8) So sir later Mrs. Shabnam informed us that she will enter management agreement with the owner and later on she promised that I will execute with you and on that time I agreed for the same . Exhibit-G

9) After the execution of the Agreement I had spoken to her to execute my management agreement to which she also agreed. But later on she failed to do so which I had prepared with my signature on it. But she had not come to give her signature and she failed to do so with her malafide intention. Exhibit-H

10) So sir my dispute had started because of the management agreement. I demanded her my payments after she had given me the cheque of 15 lakhs dated 15/02/2019. And at the same time she had given me another cheque which was blank. She also informed me that first you clear 15 lakhs cheque and later we will continue with the business and keep the security blank cheque till I make the Agreement. After few days she started using filthy languages, she also tried to implicate my husband in a false case as per the Women's Protection Act. She also use to say me if you people act too smart then your husband will be behind bars with my false complaint because I am a woman and he is a man. As me and my husband were staying at the same hotel premises I was little shocked and I was afraid as I use to travel from Mumbai Goa and Goa to Mumbai. I use to leave my husband alone in the hotel as he use to manage the food and beverage business. As I was under fear and shock as how she can think about the same, as my duty I had informed my

husband to be aware and stay away from Mrs. Shabnam and in my absence you will not talk to Mrs. Shabnam and my husband agreed for the same Exhibit-I

10) So sir later she and another partners use to target me and my husband for some or the other dispute. We also use to stay away from these partners within some days I had informed Shabnam that I am depositing the cheque on the date which you have given and written on the said cheque. Then she politely requested me please deposit the said cheque after 2-4 days. Then also I cooperated with her and agreed for the same ExhibitJ

11) So sir as per the instructions of my partners and Mrs. Shabnam I had deposited the said cheque after 24 days of the said amount of Rs.15 lakhs, which the cheque was returned with the memo of insufficient balance. When I called her that your cheque is bounced and you had given me a blank cheque which you had committed a fraud with me. She told me that you wait and if you try to act then you have to face a dire consequences. As the discussion with her I had not gone to the Goa hotel premises. Then we called her after 5 days and informed her that please return our money which you have taken, she told me that you come to Goa hotel and then we will settle and you bring all my dues what to be paid I will comply the same.

12) So sir later on I went to hotel, first she had not spoken to me and she had planned against us which was a dub of doubt. I had noticed on that day but I had not raised any objection to her. After 4-5 days she had assaulted me, abused me with my husband along with her partners and employees, which I was hurt very badly as my complaint was registered on 26/03/2019 and FIR no. 74/19. The medical was given as per the medical report. Exhibit-K

13) *So sir, my husband has also given complaint of cheating against these said accused on dated 24/03/2019. On the same complaint the police has not taken action stating that your wife is the partner and the victim and tell her to give the complaint in writing. As now I had got the evidence and collected from the bank and authorities which I have to bring on the record of the police station so that is why it has been delayed to give the complaint at your police station. Exhibit-L*

14) *So sir I request to you and your authorities to kindly consider my complaint under these sections which the accused had committed offence with their mala fide intentions. So with this I request the authorities to register the complaint as early as possible. I am ready to cooperate to the police station whenever I shall be called by this department. I shall be bounded and shall ever pray in the equity of natural justice.*

Waiting for your earliest response.

Thanking you.

Sd/

Yours faithfully,

(Kamatpreet Kaur)

In person applicant"

16. In the complaint, a reference to Rishi Gupta and the Petitioners is found mainly in the '*subject*' at the commencement of the complaint. In the main body of the complaint, the allegations particularly concern Shabnam Shaikh (A.4). There are no allegations or, at the highest, some blissfully vague allegations concerning '*another partner*'. There are no allegations or, in any case, specific allegations about Rishi Gupta or the present

Petitioners offering any inducement to Respondent No.2. There are no allegations about Rishi Gupta or the present Petitioners holding out any promises of admitting Respondent No.2 as partner in the venture of running a hotel business. Thus, even if all the allegations in the complaint are taken at their face value, the ingredients of the offences under Section 406, 420 read with Section 34 of the IPC are not even remotely made out qua the Petitioners.

17. Based upon the above position, we quashed the impugned FIR and the main Charge-sheet qua Rishi Gupta. Since the Petitioners' position is not different from Rishi Gupta's, therefore, by adopting the reasoning in our decision dated 2/8/2021, the Rule in this Petition will have to be made absolute.

18. Mr Desai's contention about the distinction between Rishi Gupta's role and the Petitioners' role cannot be accepted. The impugned FIR and the impugned Charge-sheet show no such difference. As noted earlier, the allegations are mainly against Shabnam Shaikh. Apart from the reference to Rishi Gupta and the Petitioners in the '*subject*' of the complaint, there are no allegations in the actual body of the complaint. In any case, the allegations do not spell out the ingredients of Sections 405, 420 read with Section 34 of the IPC.

19. In our decision dated 02/08/2021, the learned Counsel for the parties had referred to a Settlement and Release Agreement dated 3/12/2018. Based inter alia upon this document, the Court concluded that it was inconceivable how the ingredients of Sections 406, 420 read with Section 34 of the IPC could be said to have been made qua the Petitioner Rishi Gupta. The same conclusion will have to be reached qua the present Petitioners because there is no difference in the position of Rishi Gupta and the Petitioners.

20. For the reasons recorded in our decision dated 02/08/2021, we are satisfied that continuance of criminal Prosecution against the Petitioners would amount to the abuse of process. Accordingly, the Rule will have to be made absolute in this Petition.

21. Regarding Mr Desai's contention based upon the Charge-sheet filed by the Prosecution, we refer to the decision in *Anand Kumar Mohattta vs. State (Govt. of Nct of Delhi)* (supra). In this decision, the Hon'ble Supreme Court has held that the inherent powers of the High Court can be exercised even after the Charge-sheet is filed. Further, because the Charge-sheet was filed, we inquired from the Prosecution whether statements of any witnesses or any additional material produced on record suggest the commission of the offences under Sections 406, 420 read

with Section 34 of the IPC qua the Petitioners. However, no such material was shown to us based upon which the criminal Prosecution could legitimately continue qua the Petitioners.

22. The dispute between the Petitioners and Respondent No.2 has a predominantly civil profile. The ingredients of the offences alleged have not been made out qua the Petitioners. Therefore, considering the law laid down by the Hon'ble Supreme Court in *State of Haryana vs Bhajan Lal* (supra), a case is made to quash the impugned FIR and the impugned Charge-sheet qua the Petitioners.

23. Accordingly, we make the Rule in this Petition absolute by quashing the FIR bearing No. 144/2019 and the consequent criminal proceedings vide Charge-sheet bearing No. 206/2019 dated 15/04/2019 in the Court of the Chief Judicial Magistrate, at Panaji, Goa qua the Petitioners.

24. There shall be no order for costs.

VALMIKI SA MENZES, J.

M. S. SONAK, J.

SANTOSH S MHAMAL
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