

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.12 OF 2023.**

- 1 Kamakshi Forex Pvt. Ltd.
Represented by its Directors
Mr. Nilesh Raikar, s/o Late
Janardhan Raikar, Aged about 48
years, Married, Business.
- 2 Mrs. Nilima Raikar, w/o Mr. Nilesh
Raikar aged about 44 years , Married,
housewife.
- 3 Mrs. Rekha Raikar w/o Late
Janardhan Raikar aged about 75
years, widow housewife
All residents of H. No. 447,
Nagwaddo, Betalbatim Salcete Goa. ...Petitioners.

Versus

Mr. Jude Edwin Luis, s/o Pancracio Luis,
aged about 58 years, service, R/o. F-1,
Ground floor, Dharti Plaza Apt, Aquem
Alto Margao Salcete Goa. ...Respondent.

Mr. B. Sardessai, Mr. A. Dabholkar and Mr. G. Prabhu,
Advocates for the Petitioners.

CORAM: B. P. COLABAWALLA, J
DATED: 28th FEBRUARY 2023

ORAL JUDGMENT

1. Heard Rule. Rule made returnable forthwith.
2. By the above Writ Petition, the Petitioners seek to assail the
order dated 23rd June 2020 passed in Criminal Case

No.325/OA/NI/2016/D by the learned Judicial Magistrate, First Class at Margao, Goa, below Exh. D-51. Exh. D-51 was an application filed by the Petitioners seeking exemption from furnishing surety bonds on the ground that they were presently in a deep financial crisis as all their assets were seized by the CBI. This application was dismissed by the Trial Court only on the ground that the Accused had not cited under which provision the application for exemption was made.

3. When the above matter had come up on 20th February 2023, I heard the learned Counsel appearing on behalf of the Petitioners. Since none had appeared on behalf of the Respondent though he was duly served, I was unable to dispose of the above petition finally. In these circumstances, I had directed the learned Counsel appearing for the Petitioners to serve the Counsel appearing on behalf of the Respondent in the Trial Court and put the Respondent on notice that the above Criminal Writ Petition would be disposed of finally at the stage of admission itself. It was ordered that the matter be placed today on the supplementary board. Today also none have appeared on behalf of the Respondent.

4. In these circumstances, I have now heard the learned Counsel appearing on behalf of the Petitioners.

5. *Prima facie*, on the reading of the impugned order, I find that the Magistrate proceeds on a completely wrong premise. This Court in the case of ***Subhash Atmaram Sharma and anr. Vs. State of Maharashtra and anr., 2015 All MR.(CRI) 2589*** has clearly held that in a matter relating to offences under Section 138 of the Negotiable Instruments Act, 1881, there may be cases where the execution of bond may not be at all necessary if the Accused is attending the dates of hearing regularly in person or through his Advocates. This Court further held that there could be cases where the purpose could be served by asking the Accused to execute a personal bond only. It is only in cases where the Accused has a tendency to remain absent intentionally or without any reasonable cause, the learned Magistrate may ask for a personal bond as well as a surety bond. What is surprising to note is that relying upon this very judgment, the Magistrate, in another Criminal Case under Section 138 of the Negotiable Instruments Act, 1881, pending against these very petitioners, has in fact exempted them from furnishing surety and has directed that they furnish a personal bond of Rs.20,000/- for appearance before the Court.

6. In these circumstances, I find that the order passed by the Court below on 23rd June 2020 is wholly unsustainable and suffers from error apparent on the face of the record. I say this because it is undisputed that these petitioners have in fact been attending the

proceedings before the Trial Court and there is nothing on record to show that the Petitioners herein were either remaining absent intentionally or without any reasonable cause before the Trial Court. As mentioned earlier, the Petitioners have remained present on all the dates of hearing before the Trial Court.

7. In these circumstances, the Trial Court was wholly unjustified in dismissing the application filed by the Petitioners seeking exemption from furnishing surety merely on the ground that they have not cited under which provision the application for exemption was made. This is more so when one takes into account that the Petitioners were seeking exemption from furnishing surety on the ground that they were in a deep financial crisis and all the assets of the petitioners were seized by the CBI.

8. In these circumstances, the impugned order dated 23rd June 2020 passed in Criminal case No. No.325/OA/NI/2016/D by the learned Judicial Magistrate, First Class, Margao, is hereby set aside and Petitioners are exempted from furnishing surety before the Trial Court. Instead they shall furnish personal bonds of Rs.20,000/- each for appearance before the Court.

9. Rule is made absolute in the aforesaid terms and the above Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J.