



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.25 OF 2024

CHANDRAKANT SHANKAR PATHAK
AND 2 ORS.

... PETITIONER

Versus

THE STATE OF GOA THR. ITS
CHIEF SECRETARY AND 5 ORS.

... RESPONDENT

Mr. S. D. Lotlikar, Senior Advocate with Mr. Terence Sequeira and
Mr. Sarvesh Sawant, Advocates for the Petitioner.

Mr. Shailendra G. Bhobe, Public Prosecutor for Respondent Nos.
1 and 2.

Ms. Pinaz C. Contractor, Advocate for Respondent No.3.

**CORAM:- BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED :- 03rd April, 2025

ORAL ORDER (Per Bharati Dangre, J.)

1. The present writ petition raise a challenge to the FIR
No.368/2017 registered at Mapusa Police Station invoking
Sections 406, 409, 420 r/w 34 of the Indian Penal Code resulting
into filing of a chargesheet against the present petitioners.

2. We have heard Mr. Lotlikar learned Senior Counsel for
the Petitioners, Ms. P. Contractor learned counsel for the

complainant and Mr. Bhobe learned Public Prosecutor for the State.

3. The complainant, alleged that in the month of December 2007, the accused no. 1, Mr. Chandrakant Pathak induced him to start a partnership business and considering the relationship between the two, a Partnership was entered into and it operated in the name and style of M/s R. S. Hospitalities. The partnership purchased 'Atlanta Beach Resorts', a running Hotel through three distinct sale deeds and this comprised, three immovable properties which are situated at Calangute Bardez-Goa, by obtaining a huge loan from Buldhana Urban Credit Co-operative Society. Since the property was acquired as a property of the partnership firm, it is an allegation, of the complainant, that by preparing 3 Deeds of Sale and producing it before the Sub-Registrar, Mapusa, on 13/12/2015 by depicting that they are genuine documents, the property of the partnership firm was sold to one PCA, which was nothing but a LLP in which the accused nos. 1, 2 and 3 were the partners and this according to the complainant amounted to misappropriation of funds of the partnership firm- M/s R.S. Hospitalities.

4. We have perused the chargesheet, which has investigated the complaint and to reveal that, the accused persons

misappropriated the funds of the partnership firm and had repaid the loan, but has not produced the bank statement.

The chargesheet contain sufficient material in form of statements of witnesses as well as the Deed of Sale executed between M/s R.S. Hospitalities, a Partnership Firm being represented by the partners Mr. Chandrakant Pathak and the vendor, when the property was purchased and it clearly reflect that the purchase of the property was in the name of partnership firm and therefore if the property of the firm is misappropriated and as alleged by the complainant, and in support of which, the sale deed of M/s R.S. Hospitalities and PCA Products LLP, which is also placed on record, and it is the specific case of the complainant that it had no consent from the complainant, hence an offence under 406, 409, 420 is definitely attracted.

5. It is a trite position of law that the power under Section 482 of the Code of Criminal Procedure shall be exercised only sparingly and in the wake of the decision of the Apex Court in the case of *State of Haryana Vs. Bhajanlal, 1992 Supp (1) SCC 335*, only when a prima facie case is not made out, the High Court shall show indulgence. However, in the present case since we find that

the material compiled in the chargesheet is sufficient to make out a charge under Sections 406, 409, 420 and since at this stage it is not permissible for us to conduct a mini trial, we are not inclined to entertain the petition.

As a result of which the same is dismissed.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.