



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.64 OF 2025
WITH
CRIMINAL WRIT PETITION NO.65 OF 2025
WITH
CRIMINAL WRIT PETITION NO.66 OF 2025
WITH
CRIMINAL MISC. APPLICATION NO.108 OF 2025
WITH
CRIMINAL MISC. APPLICATION NO.106 OF 2025
WITH
CRIMINAL MISC. APPLICATION NO.107 OF 2025

KAILASHKUMAR SHIVMANGAL VERMA ... PETITIONER

Versus

MS SALUNKE BUILDERS AND

DEVELOPERS

... RESPONDENTS

WITH
CRIMINAL REVISION APPLICATION NO. 39 OF 2025
WITH
CRIMINAL REVISION APPLICATION NO. 40 OF 2025
WITH
CRIMINAL REVISION APPLICATION NO. 41 OF 2025

MS SALUNKE BUILDER AND REAL
ESTATE DEVELOPERS REPRESENTED
BY ITS PARTNER MR. SUNIL SURESH
SALUNKE

... APPLICANT

V/S.

KAILASHKUMAR SHIVMANGAL

VERMA ALIAS KAILASH KUMAR

VERMA AND ANR.

... RESPONDENTS

Mr. Shivraj Gaonkar, Advocate for the Petitioner.

Mr. Siddharth Naik, Advocate for the Applicant.

Mr. S. Karpe, Additional Public prosecutor for the Respondent – State.

CORAM:- VALMIKI MENEZES, J.

DATED :- 29th September, 2025

ORAL ORDER:

1. This order shall dispose of these proceedings, i.e. three Writ Petitions No 939 of 2025(F), 940 of 2025(F) and 942 of 2025(F) and three Criminal Revision bearing Nos.911 of 2025 (F), 909 of 2025(F) and 910 of 2025(F). The subject matter of these 6 proceedings arises from three criminal cases, all arising from a complaint under Section 138 of the NI Act, which were numbered as OA/3/2019, OA/4/2019 and OA/5/2019 before the Judicial Magistrate First Class, Valpoi. The Petitioner in the above three Writ Petitions is the accused in the aforesaid three criminal cases, while the Revisional petitioners in the above three revision petitions is the original complainant in the three criminal cases. The Judicial Magistrate First Class, Valpoi had convicted the accused

in all three cases on 09.05.2022 and then sentenced the Accused on 16.05.2022 to simple imprisonment of 15 days and to pay compensation of Rs.1,00,000/- and Rs.5,000/- to the complainant and in default to undergo simple imprisonment for 15 days. This order of conviction was challenged by the accused in three criminal appeals bearing Nos.74, 75 and 76 of 2022 before the Sessions Court at Mapusa. From the record, it appears that all three criminal appeals were heard and the orders impugned in all these six proceedings i.e. orders all dated 25.08.2025 were passed, whereby the Session Court has set aside the judgment and order of conviction passed by the Magistrate and has remanded all three complaints back to the Magistrate, to exhibit a particular document i.e. the extract of the Register of Firms, to substantiate that the complainant firm in all three criminal cases was a registered partnership firm.

2. I perused the records of the proceedings and heard the learned Advocate for the parties. Both Counsel, for the Accused and for the Complainant, are *ad idem* about the fact that there is no dispute between the parties as to the Registration of the partnership firm (complainant). There was no dispute or objection raised at any point in time during the course of the trial to the extract of the register of the firm being produced and exhibited. The record reveals that the Criminal Case No. OA/3/2019, the extract of the register of the partnership firm was marked Exh-D25 in the evidence sheets of all

three cases. The parties, therefore, never had doubt or ever raised any objection about the registration of the complainant partnership firm. The only doubt that has been raised by the Appellate Court was that the trial Court recorded the evidence of Pw2 Sonia Halarnkar, whose designation was shown as “Sub-Registrar” when it should actually be read as “Registrar of Firms”. This flaw in the recording of the evidence is of no consequence since neither party has objected to it and the main questions raised in the appeals are on whether the order of conviction would be sustained on the evidence recorded by the parties.

3. Coincidentally, the Sub-Registrar of every division is also appointed as Registrar of firms, which is, by an innocuous error, may have cropped up in the recording of the evidence, but the same is of no consequence, and the evidence of Pw2 shall be now read as “Registrar of Firms of that division”.

4. Section 391 of the CrPC empowers the appellate Court to direct the trial Court/Magistrate to record additional evidence if it so opines, or such evidence may also be recorded by the Appellate Court on its own. The provisions of Section 391 empower the Appellate Court to avoid setting aside the orders of conviction, as this would have serious consequences on the case.

5. In the present case, neither of the parties has argued for a remand, and both parties are desirous of having the appeal decided on its own merits. The written arguments placed on record also did not suggest that either of the parties had sought a remand for such an innocuous reason; reading of paragraph 16 of the impugned judgment seems to suggest that the Magistrate had committed an error in not following the procedures laid down for hearing matters under 138 of the NI Act, though the order itself is silent on which part of the procedure vitiates the entire trial or the final judgment in the matter.

6. Having gone through the record, there is no error in the procedure provided under Section 138 of the Act and the Appellate Court ought to have decided three appeals on their merits. For all the above reasons, the impugned orders dated 25.08.2025 passed by the Sessions Court in Criminal appeals No. 74, 75 and 76 of 2022 are quashed and set aside. There is no cause for setting aside the impugned judgments and orders of conviction passed by the Magistrate in all three criminal complaints. The Sessions Court shall now hear the three appeals on their own merits, and after considering the written arguments, which have been placed before it. The appeal shall be disposed of preferably by 15.12.2025. It is made clear that the judgment i.e. now to be passed on the three appeals shall be passed uninfluenced by any observations made in this order.

7. The parties to appear before the Sessions Court, Mapusa on 06.10.2025 at 10.00am.

VALMIKI MENEZES, J.