

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.115 OF 2023

JOSEPH B BRAGANZA REP. BY HIS
WIFE AND ANR.

....PETITIONER

Versus

THE STATE OF GOA THR. CHIEF
SECRETARY.

....RESPONDENT

Petitioner No. 2 present in person.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 08th May, 2024

PRONOUNCED ON: 09th May, 2024

ORDER

1. Heard the Petitioner No. 2 in person and also appearing as attorney of Petitioner No. 1 and Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondent.

2. The Petitioner would submit that the order passed by the learned Trial Court dated 17.05.2023 thereby issuing notices to the proposed Accused persons in an application under Section 340 of the Criminal Procedure Code(Cr.P.C.) is contrary to the decision of the Apex Court in the case of *Iqbal Singh Marwah & Anr vs Meenakshi Marwah & Anr, (2005) 4 SCC 370*, and the decision

passed by this Court in ***Writ Petition No. 1096 of 2023(F)*** dated ***17.05.2023***.

3. The Petitioner would submit that a Civil Suit is pending before Civil Court wherein the Petitioner has filed an application under Section 340 of Cr.P.C with a prayer to conduct an inquiry that the proposed Accused/Defendants therein committed an offence by producing a false and fabricated document. She submits that in such inquiry, the proposed Accused had no say and thus, the direction of the learned Trial Court to issue notices to the proposed Accused is clearly against the decision in the case of ***Iqbal Singh Marwah(supra)***.

4. A Co-ordinate Bench of this Court in Writ Petition No. 1096 of 2023 vide order dated 17.05.2023, allowed the petition filed by the present Petitioner in connection with the same aspect and quashed the order of issuance of notices. The learned Trial Court is therefore directed to conduct inquiry under Section 340 of Cr.P.C. in accordance with law and as directed by the Apex Court in the case of ***Iqbal Singh Marwah(supra)***.

5. The matter in hand is similar to the facts and circumstances and therefore, the petition needs to be allowed.

6. The impugned order thereby issuing notices to the proposed Accused persons is hereby quashed and set aside. The learned Trial Court shall conduct inquiry under Section 340 of Cr.P.C. in accordance with law and as declared by the Apex Court in the case of ***Iqbal Singh Marwah(supra)***.

7. The Petition stand disposed of in above terms.

BHARAT P. DESHPANDE, J.