

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 7 OF 2020

MRS. ANNA D'MELLO,
d/o late Mr. Martin Sebastiao,
Braganza, aged 52 years,
r/o H.No. 585, Baga, Arpora,
Bardez-Goa ... PETITIONER

VERSUS

MR. CLEOPHAS FERNANDES ALIAS CELFA,
s/o late Mr. Mario Fernandes,
aged about 40 years, r/o H.No.
259/2, Baga, Arpora, Bardez, Goa ... RESPONDENT

Mr. Ressano Hector Noronha, Advocate for the Petitioner.
Mr. Abhijeet Kamat, Advocate for Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED : 13th February, 2024

ORAL JUDGEMENT

1. Heard Mr. Noronha, learned Counsel appearing for the Petitioner and Mr. Kamat, learned Counsel appearing for the Respondent.
2. Rule.
3. Rule is made returnable forthwith.
4. Heard parties for final disposal at the admission stage itself.
5. The Petitioner is challenging the Order dated 12.09.2019 passed by the learned Trial Court thereby observing that the

documents i.e. subsequent complaints are not relevant to decide the present complaint and holding the objections raised by the learned Counsel for the Accused/ Respondent.

6. Mr. Noronha submits that the documents which the Petitioner/Complainant was relying upon are the earlier letters addressed to the Panchayat and which are relevant for the purpose of deciding the complaint.

7. Mr. Kamat appearing for the Respondent clearly submitted that the Apex Court in the case of **Bipin Shantilal Panchal Vs. State of Gujarat and Anr.**, reported in **(2001) 3 Supreme Court Cases 1**, observed that the procedure to be followed while taking evidence and when objections are raised regarding admissibility of the matter to record such objections and then decide it at the final stage, so that the Appellate Court would be able to consider the decision of the Court on such objections along with the Appeal.

8. In case of **Bipin(Supra)** it has been clearly observed by the Apex Court in Para 13, 14 and 15 which reads thus:-

13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or

revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course.

(However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. *The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.*

9. The above observations of the Apex Court are squarely applicable to the matter in hand. Accordingly, instead of deciding the objections at the stage of recording evidence, such objections could be noted and required to be decided at the final stage.

10. Accordingly, the impugned Order needs to be quashed and set aside. The learned Trial Court is therefore directed to take the

recourse as laid down in the case of **Bipin (Supra)** and proceed further.

11. In view of the above observations, rule is made absolute in above terms.

12. Trial Court shall follow the procedure laid down in the case of **Bipin (Supra)** and proceed further.

13. Petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.