



Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 92 OF 2023**

Patrick Diniz Alias M.P. Diniz
son of Domingos Diniz, advocate,
aged 84 yers, resident of H.No.887,
Cariamoddi, Curchorem, Goa.(represented
herein by his duly constituted attorney,
Richard Florence Diniz @ Richard Diniz
@ R. Diniz, aged about 50 years, Indian,
resident of House No. 887, Cariamoddi,
Curchorem, Goa

...PETITIONER

Versus

1. Victor Diniz, son of Domingos Diniz,
aged 72 years, advocate, resident of
Cusmane, Quepem, Goa.

2. Sandeep Verlekar, s/o Sharanchandra
Verlekar, aged aobut 64 years, resident
of H.No.108, Abade Faria Road,
Margao, Salcete, Goa.

3. Arun Verlekar, s/o Sharanchandra
Verlekar, aged aobut 58 years, resident
of H.No.108, Abade Faria Road,
Margao, Salcete, Goa.

...RESPONDENTS

Mr. Parag S. Rao with Ms. Sowmya R. Drago, Advocates for the
Petitioner.

Mr. James Lopes, Advocate for Respondent No.1.

**CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 22nd October, 2024**

ORAL JUDGMENT

1. Rule.
2. Rule is made returnable forthwith.
3. Heard finally with consent.
4. The present petition is filed challenging the order passed by the Revisional Court wherein certain aspects which were highlighted and pointed out before the Trial Court are not being considered.
5. Mr. Rao learned counsel appearing for the Petitioner submits that the Complainant specifically disclosed about the conspiracy and criminal breach of trust as well as commission of theft of the articles belonging to the Complainant from the premises. He submits that though the learned Trial Court has observed that there appears to be a criminal conspiracy between Accused Nos.1, 2 and 3, no process was issued. He submits that the Revisional Court also failed to consider this aspect and accordingly, both the Courts arrived at a wrong conclusion.

6. Mr. Rao while pointing out the deposition of the Complainant and his witnesses would submit that there is prima facie material to issue process against Respondents, however, the same has not been properly considered by the Courts below.

7. Per Contra, Mr. Lopes learned counsel appearing for the Respondent No.1 would submit that the premises were in possession of Respondent No.1 which he handed over to the owner while shifting to the new premises. He submits that there is no material to show that Complainant was in possession of the said premises. According to him, conspiracy angle and the allegations regarding criminal breach of trust are not made out and accordingly, both the Courts rightly refused the request of issuance of process.

8. Rival contentions fall for determination.

9. A challenge in the present petition is the refusal to issue process against the Respondent No.1 and thereafter rejection of revision by the First Appellate Court.

10. Without going into the merits of the said contentions, the order passed by the Magistrate dated 04/05/2022 would clearly go to show that the material placed during inquiry was considered and three separate complaints filed by the Complainant were taken into account. The learned Magistrate has observed in paragraph 11 that Accused No.1 replaced the lock of the said premises and thereafter, it was noticed that the furniture/law books were found missing. There is observation of the learned Trial Court in paragraph 11 that it appears that there was a conspiracy involving Accused No.1. However, the learned Trial Court failed to issue process against Accused No.1. A revision was filed by the Petitioner before the First Appellate Court challenging such order of the Magistrate which came to be disposed of by an order dated 28/04/2023.

11. Upon perusal of the order passed by the Revisional Court, it is clear that the observations of the learned Trial Court with regard to prima facie appearance of conspiracy is not been dealt with. There is absolutely no discussion with

regard to such observations of the learned Magistrate, while deciding revision application as well as the complaint filed on 10/10/2017. Though there is a discussion with regard to the complaint filed by Accused No.2/Sandeep dated 11/10/2017, the aspect of conspiracy and criminal breach of trust is alleged in the complaint, are not properly addressed.

12. Learned Revisional Court only stressed upon the statement of Accused No. 2 recorded by the Police during the panchanama and accordingly, observed that such statement is clearly barred by Section 25 and 26 of the Indian Evidence Act, 1872. Though such aspect is properly appreciated, the contents of the complaint dated 11/10/2017 filed by Accused No.2/Sandeep before the Margao Town Police Station cannot be considered as hit by Sections 25 and 26 of the Indian Evidence Act as it is an independent complaint lodged by Accused No. 2 against the Complainant.

13. Without going into the merits with regard to the so called possession of the premises, the Revisional Court should have considered the evidence on record along with the

Complaint filed by Mr. Sandeep before the concerned Police Station, in order to arrive as to whether there is sufficient ground for issuing process against Accused No. 1.

14. Since this aspect is not considered, the recourse available to this Court is to quash and set aside Revisional Court's order and to remand the matter for fresh consideration.

15. Accordingly, the order passed by the Revisional Court dated 28/04/2023 in Criminal Revision Application 35/2022 is hereby quashed and set aside. The revision is restored to the file of Additional Sessions Judge at Margao with directions to decide the said revision as expeditiously as possible and after giving an opportunity to argue the matter afresh.

16. Rule is made absolute in above terms. No costs.

BHARAT P. DESHPANDE, J.