

CRIMINAL MISCELLANEOUS APPLICATION NO.54 OF 2003

1. Shri Naseem Gore,  
r/o Taj Villa, 115,  
Canter Rd., Bandra(W),  
Mumbai - 400 054.
2. Shri Tarik Gore,  
r/o Taj Villa, 115,  
Canter Rd., Bandra(W),  
Mumbai - 400 054.

... Applicants.

versus

1. National Computers, a  
Partnership Firm, having  
office at 202, Rizvi Chambers,  
Panaji, Goa, represented  
herein by its Partners  
(1) Yasmin M. Virani &  
(2) Zinath T. Isani
2. State of Goa,  
through the Public Prosecutor,  
Panaji, Goa.

... Respondents.

Mr. S. G. Bhobe, Advocate for the Applicants.

Mr. A. P. Lawande, Advocate for Respondent No.1.

CORAM: P. V. HARDAS, J.

DATED: 27TH JUNE, 2003.

ORAL JUDGMENT

By consent of parties, this application is taken up for final hearing at the stage of Admission.

2. This Petition under Section 482 of the Code of

Criminal Procedure seeks the quashing of the prosecution initiated under Section 138 of the Negotiable Instruments Act, 1881 against the present Applicants. Criminal Case No.242/OA/02/C is said to be pending on the file of the Judicial Magistrate, First Class, Panaji.

3. In support of the Petition, various grounds have been urged for quashing of the said Criminal Case filed against the present Applicants for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. However, according to me, it is not necessary to examine the other grounds which have been urged by the Applicants as in paras 9 to 11 it is stated by the Applicants that they appeared before the learned Judicial Magistrate, First Class, Panaji on 27th January, 2003 through their Counsel and sought for exemption from personal appearance which was granted. Thereafter, on 3rd March, 2003, the Advocate for the Applicants filed the Vakalatnama on behalf of the Applicants and again sought for exemption from personal appearance which was granted by the learned Trial Court. Thereafter, the case was fixed on 19th March, 2003 and meanwhile, the present application came to be filed. Thereafter, it is stated that as the Applicants were informed that they had to first appear before the Court, execute the bail bonds and only then the Court would consider the application for recalling the process and

hence the Applicants did not file the application for recalling of the process though the same was ready for filing. Copy of the application for recalling of the process is at Annexure 'C' to the application.

4. Be that as it may, without entering into the merits of the statement which is made in para 11 of the present application, according to me, the present Criminal Miscellaneous Application can be disposed of by permitting the Applicants to file the application for recalling of the process in the Criminal Case said to be pending. However, in the peculiar facts and circumstances of the case, since the Applicant No.1 is said to be aged 70 years and is presently abroad, the learned Trial Court shall grant exemption from personal appearance to Applicant No.1 till the applications for recalling of the process is decided. The exemption shall be granted by the learned Trial Court on a condition that Applicant No.1 shall submit an undertaking to the Court that he would appear before the learned Trial Court in the event his application for recalling of the process is rejected by the learned Trial Court. The Applicant No.2 shall appear before the learned Trial Court and shall execute the bail bonds and thereafter the learned Trial Court shall hear and decide the application for recalling of the process, giving an opportunity to the Respondent/Complainant to file his detailed reply to the

said application. Since, it is stated that Applicant No.2 is required to go abroad in connection with the business, the learned Trial Court shall consider the grant of exemption to Applicant No.2, if an application for grant of exemption is moved by the learned Counsel for Applicant No.2.

5. In view of what is stated above, according to me, it is not necessary for this Court at this stage, to examine the various grounds which have been urged in the present application. The application for recalling of the process shall be filed before the learned Trial Court on 30th July, 2003, when the matter is said to be fixed before the learned Trial Court. Applicant No.2 shall thereafter appear before the learned Trial Court and execute the bail bonds on the date so given by the learned Trial Court. On failure of Applicant No.2 to appear before the learned Trial Court to execute the bail bonds, the learned Trial Court shall take steps for securing the presence of Applicant No.2 before the Court.

6. Criminal Miscellaneous Application is allowed on the above terms with no order as to costs.

P. V. HARDAS, J.

RD.