



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.78 OF 2026**

**DAMACIANO FERNANDES
VERSUS
GIRDHARLAL GANGANI & ANOTHER**

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Mr. Nitin Sardesai, Senior Advocate with Mr. L. Raghunandan, Mr. S. Vales and Mr. Siddhant Sardesai, Advocates for Petitioner
Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd SEPTEMBER, 2026.**

FINAL ORDER:-

1. The petitioner impugns order dated 08.11.2023 passed by Additional Sessions Judge-1, North Goa in Criminal Revision Application No.3/2023.
2. The petitioner filed private criminal complaint for cheating before Judicial Magistrate First Class at Mapusa, particularly for offences punishable under Sections 415, 418, 420 r/w Section 120-B and 34 of Indian Penal Code. The learned Magistrate recorded statement of Shri. Joseph Fernandes/complainant no.2 in verification. The complainant then summoned Mr. Girdharlal Gangani as their witness. Pursuance to summon, he appeared before Court. While his examination was going on, he filed application for his discharge as witness in proceeding. The learned Magistrate rejected application vide order dated 18.03.2016.
3. Mr. Girdharlal Gangani filed Criminal Revision Application No.60/2016 before Sessions Judge at Mapusa, who dismissed Revision

Application observing that allegations in complaint shows that accused as well as witness was dodging complainant. An allegation is made against witness that he had been doing so in connivance with accused fraudulently and dishonestly to cheat complainant. As such, witness should have been made as accused.

4. It appears that, in light of aforesaid observations, petitioner filed application dated 21.07.2018 before Judicial Magistrate First Class at Mapusa under Section 319 of Cr.P.C. for proceeding against Mr. Girdharlal Gangani and Mr. Andrew Rodrigues alleging them to have committed criminal acts alongwith accused no.1. Thereupon, learned Magistrate passed order dated 03.03.2020 directing to proceed against Mr. Girdharlal Gangani and Mr. Andrew Rodrigues as accused in addition to accused no.1. Thereafter, Ld. Trial Court directed the Complainant to take steps as regard to amend cause title to issue summons to newly added accused, upon which Summons were issued to newly added accused Mr. Girdharlal Gangani and Mr. Andrew Rodrigues on 20.10.2022. The petitioner has also filed present Writ Petition raising challenge to order dated 03.03.2020 passed by Judicial Magistrate First Class at Mapusa.

5. Respondent No. 1 being aggrieved by order dated 03.03.2023 made an application before the Ld. Addl. Sessions Judge bearing Criminal Revision Application No. 3/2023 which was allowed by order

dated 08.11.2023 thereby quashing and setting aside the order dated 03.03.2023 and holding that there was no material for invoking the powers under Section 319 of Cr.P.C. and adding Respondent no. 1 as an accused. The petitioner seeks to take exception to order dated 08.11.2023, thereby exonerating respondent no.1.

6. The learned Senior Advocates appearing for both parties fairly concede that observations of learned Sessions Judge in impugned order and further order passed by learned Judicial Magistrate First Class, thereby directing to proceed against Mr. Girdharlal Gangani and Mr. Andrew Rodrigues as accused at preliminary stage of private complaint was contrary to law laid down by Constitutional Bench of Supreme Court in case of ***Hardeep Singh Vs. State of Punjab and Ors.***¹, wherein it is observed that word ‘evidence’ means only such evidence as is made before court, in relation to statements, and as produced before court, in relation to documents. It is only such evidence that can be taken into account by Magistrate or Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation. While considering application of Section 319 of Cr.P.C. in case of complaint cases it has been observed as under:

“51. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Cr.P.C. i.e. provisions of Sections 200, 201, 202, etc. Cr.P.C. applicable in the case of Complaint Cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint Cases is a distinct category of criminal trial where

¹ 2014 (3) SCC 92.

some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872, (hereinafter referred to as the 'Evidence Act') comes before the court. There does not seem to be any restriction in the provisions of Section 319 Cr.P.C. so as to preclude such evidence as coming before the court in Complaint Cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the Court, such evidence can be used only to corroborate the evidence recorded during the trial for the purpose of Section 319 Cr.P.C., if so required.

52. What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 Cr.P.C. acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Cr.P.C. is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 Cr.P.C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

53. Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.”

7. In light of aforesaid exposition of law, learned Senior Advocates appearing for parties concedes that addition of accused at pre-cognizance stage in private complaint in exercise of Section 319 of Cr.P.C is not permissible. Eventually learned Magistrate was not

justified in issuing summons to Respondent no. 1 treating him to be accused. Admittedly complaint before him is at pre cognizance stage. There is no material on record that can lay foundation for action under Section 319 of Cr.P.C. Hence, following order:

ORDER

- a. Criminal Writ Petition is allowed.
- b. The impugned order dated 08.11.2023 passed by Additional Sessions Judge, North Goa in Criminal Revision Application No.3/2023 as well as order dated 03.03.2020 passed by Judicial Magistrate First Class at Mapusa in CC No.218/14/E are quashed and set aside keeping all contentions open to be considered at post cognizance stage of proceeding based on evidence of complainant and his witness.

(S. G. CHAPALGAONKAR)
JUDGE