

(1989) 01 BOM CK 0017

In the Bombay High Court

Case No : Criminal Application No. 2326 of 1988

Daga Enterprises and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 12-01-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482

Citation : (1989) 1 BomCR 467 : (1989) 91 BOMLR 840

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Advocate : A.K. Desai, instructed by Vimadalal and Co, for the Appellant; K.D. Ranadive, Public Prosecutor for the respondent No. 1 and M.H. Pariera, for the respondent No. 1, for the Respondent

Judgement

V.S. Kotwal, J.—Heard learned Counsel for both the sides.

2. Perused the relevant papers.

3. "Dharam Kanta" symbolises the "scale of justice". However, the irony is that the producer of the film "Dharam Kanta" has himself to knock the doors of the Court to get justice. The said film is produced by the second respondent herein who is original complainant and who enjoys a wide reputation in the film world as a renowned Producer and Director of celluloid films and there are several of such highly acclaimed films to his credit. He produced this film in the year 1980-81 with an imposing star-cast and also with an equally imposing grandeur. The first petitioner is a registered partnership firm carrying on the business at Calcutta while the second and third petitioners who are the husband and wife are the partners of the said firm. It is in relation to the said film that certain disputes ultimately obliged the respondent-complainant to file a criminal complaint in the Court of the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Bombay for the offences under sections 420 and 409 read with section 34 of the Indian Penal Code against the three petitioners herein. Three petitioners herein are original accused Nos. 3, 2 and 1 respectively. The complaint projects quite

vividly all the necessary details formulating the said offences for which the trial is sought for. The petitioners on the other hand claim that no prima facie case has been made out to justify issuance of process and therefore they have approached this Court u/s 482 of the Code of Criminal Procedure invoking the inherent powers for quashing of the criminal proceeding. Only a few salient features as are reflected in the complaint and in various documents and which have been canvassed on behalf of the complainant can be catalogued without embarking on any full-fledged process of appreciation of evidence.

4. The two petitioners approached the complainant in the year 1980 when after negotiations an agreement was struck between the parties which was executed by the second petitioner on behalf of herself and the other two petitioners though both the petitioners 2 and 3 actively participated in the negotiations and also effectively associated in making representations which according to the complainant, ultimately proved to be false and which representations were made with an intent to defraud the complainant. The agreement in question is a detailed document containing several clauses, each of which assumes relevance in the context of the controversy. A short resume of the said clauses highlight that the said firm was to act as the agent for the complainant's company which is known as " Sultan Productions" for distributing, exhibition and exploitation of the said film "Dharam Kanta" in 35 m.m. in colour for commercial exhibition only in Eastern Circuit which was on the minimum royalty amount. The two partners represented that the firm was entitled to spend a certain amount towards the publicity of the film in that circuit for which they represented that before hand a budget of publicity expenses would be formulated and submitted for the approval of the complainant's company and it is only after getting the said approval that the publicity campaign was to be undertaken only after a written approval from the complainant's company. It was also stipulated and it was so represented by the petitioners-accused that every contract of exhibition or exploitation of the said firm in any theatre in the said Eastern Circuit would be done after obtaining the complainant's permission in writing and further the said firm was not entitled to screen the said film on fixed hire in "A" Class and "B" Class centres without the complainant-company's written approval. The said two accused had undertaken to submit a complete list of all stations in the said Eastern Circuit with classifications where the said firm would be run on fixed hire basis. They further agreed that the firm would intimate to the complainant's company in writing every week the advanced booking statements and the movement of prints so as to reach the company within three days. They had also agreed to transmit every month the copies of hire bills along with the copies of agreement of each and every exhibition and also to transmit to the complainant's company every month a business statement where the film is exhibited along with the gross collections, terms of exhibitions, period of exhibition and also the share of the said firm from such exhibition. It was their obligation to forward duplicate of daily collection report as also statement of publicity expenses.

5. It is on the basis of these and other representations that an agreement was

arrived at between the parties which contained all these stipulations in various clauses and each of the recitals in the complaint is fully supported by the corresponding recital in various clauses of the agreement. It is on the basis of these representations that the complainant's company delivered the prints of the film to the said firm and the film was released for screening in the circuit in September 1982. However, according to the complainant after having obtained possession of the prints the accused shed out the earlier stance of making honest representations and adopted an entirely different appearance which obviously resulted in cheating and defrauding. They were irregular in sending the business statements while most of the publicity expenses duly supported by the bills and vouchers in that behalf were never despatched. The complainant -company's approval was not taken in items contrary to that obligation under the agreement. Similarly weekly hire bills and copies of agreement of each and every exhibition contract were also not despatched. Not only that but it came as a rude shock to the complainant when it was revealed that many of the business statements submitted by the accused concealed and suppressed deliberately several material details relating to the films screened, gross collections, terms of exhibitions etc. The further revelation was however , according to the complainant, more shocking and disturbing. One of the representatives of the complainant's company verified the documents qua this transaction when he discovered that the accused had screened the said film at several places in that territory and had suppressed the said fact in the business statement. This was confirmed on further verification by the representatives of the complainant. By way of illustration, the accused had despatched the print in September 10,1982 under Despatch Note No. 992 to Kalpana Talkies at Howrah. Likewise the said film was screened in about 64 stations and the accused, according to the complainant, siphoned the entire amount of collection from all those centres and thus cheated and defrauded the complainant's company and also caused criminal breach of trust to huge amount tuning to me than Rs. 6,00,000/- which belonged to the complainant's company. The complainant maintains that it is only but for the representations made by these accused persons that the prints were delivered to them though according to him the accused at the inception of the transaction itself had dishonest intention to cheat and defraud the complainant. Several amounts given by different exhibitors to the accused whose names and centres were deliberately suppressed were so given and entrusted on behalf of the complainant's company for the said picture. The complainant very firmly asserted right from the beginning and also reiterated in the complaint that it was represented and that it was settled that the said accused were to act only as agents of the complainant's company who was to remain as the Principal.

6. It is on these and other allied allegations that the said complaint came to be filed. A search warrant was issued when certain documents came to be seized. The learned Magistrate after recording verification was pleased to issue process on the said counts.

7. Shri. Desai, the learned Counsel for the petitioners, mainly contended that

there is no warrant for issuance of process on the allegations as made by the complainant and according to him in reality it is a civil dispute formulating at the most the breach of the agreement and therefore the forum of Criminal Court has been wrongly resorted to for the purpose of collecting civil dues. His main contention is that the agreement and the attendant circumstances indicate that there was no agreement of agency but the accused's firm and the complainant's company had relation of principal to Principal.

8. It is difficult to endorse this view at the threshold of this proceeding when the evidence is yet to be led by the complainant. However, the allegations as reflected in the complaint and which are absolutely consistent with the correspondence ensued between the parties do justify spelling out at least a prima facie case in favour of the complainant formulating the said criminal offences and taking the transaction out of the purview of a mere civil dispute. As stated, several material features were suppressed deliberately while some important aspects were concealed. It is ex-facie borne out that the film was screened in several centres the details of which are given in the complaint and at least in the prima facie field it becomes adequately clear that the entire amount was siphoned and pocketed by the accused which was obviously in complete destruction of the representations made by the accused and the stipulations agreed between the parties and which further exhibits formation of dishonest intention causing wrongful gain to the accused and corresponding wrongful loss to the complainant. This is spelt out from the recitals in the complaint and the correspondence at least in this prima facie field. It is with interest to note that the accused in one of the correspondence had indicated that the said film was in fact screened to some centres though not in all the centres as alleged by the complainant and the accused had collected various amounts but that those remained to be incorporated in the statements which were submitted to the complainant's company and which according to the accused was the product of oversight. The accused further indicated that though the said screening was done long back in the year 1982 or so those amounts remained to be included in the statements by way of mere omission and which omission came to the notice of the accused during the course of audit for the corresponding year and therefore it was sought to be rectified by including the same in the monthly statement in the years 1988. It is contended by Shri. Pariera, the learned Counsel for the respondent complainant, that not only the fallacy but the hollowness of the said explanation is exposed by the bare and naked fact that the audit for the said years 1982 and 1983 or so must have been over long back in 1983 and 1984 and certainly much before 1988 and therefore to say that the mistake was realised in that audit and therefore was sought to be rectified in 1988 is itself unpalatable and as such the said explanation is most vulnerable and slippery while the contention is conveniently spacious. Prima facie at least the contention raised on behalf of the complainant in the context of this glaring nature would require a serious assessment which can be done only at the trial. In that behalf it is also to be indicated that even in that field under the process of the so-called

rectification there has not been the truthful disclosure of entire features but only a few items of screening at some centres has been disclosed whereas the bulk of the items has been again suppressed. Thus even the rectification is in the truncated form. This recital in the notice given by the accused really speaking at least ex-facie lends quite substantial corroboration to the complainant's story. It is strenuously urged by the learned Counsel for the complainant and which is boldly reflected in the allegations in the complaint and the various correspondence suggesting that several amounts have been wrongfully siphoned and misappropriated by the accused causing wrongful loss to the complainant. This allegation also would require a serious examination which again can be done only on the touch stone of evidence.

9. Shri. Desai, the learned Counsel, endeavoured to submit that no relationship of agency was created and in fact the relationship was of Principal to Principal. He sought to place reliance on a decision in Mohd. Latif Choudhry Vs. Smt. Amritkala Baveja and Another, in support of this contention. However, the facts therein when read on the parallel track on the facts as alleged by the complainant in the instant case it would become manifestly clear that at least in the prima facie field there are apparently distinguishing features between the two sets of circumstances. The most important items about suppression screening the film in different centres and pocketing the entire amount and concealing the same from the complainant and ultimately the allegation of misappropriation and breach of trust qua the substantial amount legitimately belonging to the complainant are some of the features which according to Shri. Pareria, the learned Counsel, would formulate much divergence making this ratio not applicable to the facts of the instant case. Atleast in the prima facie field the thrust of the said contention cannot be lightly brushed aside. The complaint, the correspondences and the various clauses in the agreement including the preamble would at least prima facie justify the complainant's contention about the formation of agency and in fact the accused's firm has been styled all along as the Agent and hence Shri. Pareira submitted with justification at least ex-facie about the existence of agency agreement and as such correspondingly their being no question of the relation of Principal to Principal. All the said stipulations need not be stated over once again to highlight this assertion, though some of those are already indicated. In addition, the agreement at least prima facie as reflected though its recitals prescribe certain relevant features. viz. that it is described as the agency agreement where the accused firm is appointed as agents qua agency of distribution while the complainant as the Principal reserved right to terminate the agent in certain contingencies, that the accused had undertaken to act and exhibit the film to the best of their ability; that the agent would have no authority to appoint sub-agent or sub-distributor without express written consent of the complainant that all the property to remain as that of the complainant though in trust with the accused during the said period and shall be returned to the complainant and the accused as agent undertook to indemnify the complainant as the Principal in respect of certain claims. All these and other

features indicate the control and dominance of the complainant company. To put it at the minimum, at least in the prima facie field the contentions raised on behalf of the complainant deserve to be up-held. It need not, however, be overlooked that the nature of the agreement is not the only governing factor, because even de hors thereof the other allegations of the complainant about the misrepresentations, inducement, parting with property and suffering wrongful loss as also secretly pocketing large amounts as already discussed with necessary details are more formidable and equally relevant. In the face of specific allegations of the complainant as discussed earlier, at least prima facie the matter does not rest with the concept of breach of agreement, but travels much further formulating the criminal offences as alleged which obviously requires further assessment and examination on evidence whereas on endeavour on behalf of the accused to give it the label of a mere breach of agreement entailing in the claim of damages is over simplification which obviously tends to miss the crux and foundation. The other shade is that the entire proceeding is still at the threshold and inception when the evidence is yet to be led so that even the accused would get full opportunity to cross-examine the complainant and to produce whatever documents in support of their defence and it is under that exercise that they can ventilate all contentions even qua all the clauses of the agreement whereas correspondingly the complainant also would get equal opportunity to substantiate his case in every respect. All this including the construction of the documents can hardly be done in the absence of evidence though prima facie those can be accepted in support of the complainant's case. The recitals in the complaint can hardly be doubted much less discarded at this stage. In the minimum a proper case to go on trial has been clearly made out. In any event, the complainant positively asserts about the representations made by the two accused which according to him not ultimately proved to be false but were so falsely made deliberately even right from the inception and thus were the intentional misrepresentations made from the beginning and also asserts positively that he was induced not only to enter into an agreement but to part with the prints of the film only on the basis of those representations. There is positive allegation of criminal mis-appropriation as also criminal breach of trust as also formulation of an element of cheating the under current of which being the false representations and dishonest intention. There is no reason to distrust much less to discard the allegations as reflected in the complaint. The entire argument that was sought to be canvassed on behalf of the accused substantially embraces the defence and the process for up-holding any such plea of defence can hardly be taken at the threshold of the criminal proceeding when even the complainant has not been given an opportunity to enter the witness box. Since however the evidence is yet to be led, it would not be proper to express any final opinion on all these aspects.

10. All said and done at least ex-facie this proceeding cannot get the label of a civil dispute resulting into merely a breach of agreement but it tends to go much beyond the same and obviously therefore the complaint cannot be short circuited

as suggested by the accused. Especially when a prima facie case has been made out then in normal course the proceeding should continue and ultimately culminate in the final decision on merits one way or the other which can hardly be short-circuited in the mid-stream. The Code of Criminal Procedure itself envisages different stages in a criminal proceeding and different gradations as also different concepts are prescribed under the Code itself for all these different stages. Section 204 of the Code of Criminal Procedure relates to the stage of issuance of process and the requirement at that stage is only to the effect that the Magistrate should be satisfied that there is sufficient ground for proceeding against the accused on the basis of the complaint that is filed u/s 200 of the Code. The terminology used therein itself suggests the limited and restricted field without there being any process of detailed inquiry or appreciation of evidence much less the Magistrate is concerned to make a search in order to find out whether the trial would entail into conviction. Sufficiency of ground to proceed against the accused is the only limited requirement and which satisfaction can be achieved in that prima facie on reading the complaint, the verification and the evidence if allowed to be led at that stage which in turn indicates that the recitals in the complaint spelling out an offence in the prima facie field would be enough element for formulating such satisfaction of sufficiency of ground for proceeding against the accused which obviously would exclude any consideration of finer shade of the controversy. This concept of sufficiency of ground is well settled and well justified and therefore need not be re-stated. It is thereafter that the evidence is allowed to be led by the complainant and a stage arises for consideration as to whether a charge is to be framed or the accused is to be discharged. If the Magistrate feels that no case has been made out against the accused if unrebutted would warrant his conviction then the accused is to be discharged u/s 245 of the Code in a warrant case. As against that if the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under that chapter then a charge is to be framed u/s 246 of the Code. The dimension of the requirement and the gradation is thus changed from the stage of issuance of process to the stage of framing of the charge. It is at the final stage that the final adjudication is to be made by the learned Magistrate entailing into an order either of acquittal or conviction.

11. In view of this scheme it becomes manifest that the requirement at the stage of issuance of process is much meagre when even by reading of the complaint and the verification the Magistrate may form an opinion only to the extent that there are sufficient grounds to proceed against the accused. This thus gives green signal for proceeding against the accused and commencement of the trial. In contrast at the later stage after the evidence is led some more requirement is warranted at the time of framing of the charge so much so that the Magistrate has to satisfy that there is ground for presuming that the accused has committed an offence and in the last stage the ultimate conclusion is to be reached. For the purpose of the first stage therefore there need not be any process of appreciation of evidence because the evidence is yet to be led and therefore the recitals in the

complaints and the statement of the complainant would be enough to serve the purpose for formulating that opinion. The second aspect suggests that once the stage of issuance of process is over come and the trial commences then the evidence is unfolded and the accused also gets full opportunity to cross-examine the complainant and the witnesses and to unfold his defence whereafter at the stage of the charge he gets further opportunity to persuade the learned Magistrate to discharge him u/s 245 of the Code. These two aspects would harmoniously entail into two corresponding material considerations namely that when the complaint read by itself makes out sufficient ground for proceeding against the accused then the process must be issued and secondly the accused would not be prejudiced because he would get opportunity after the issuance of process and before the stage of framing of the charge to ventilate all his grievances and then to seek for discharge if the merits so justify. Dismissing the complaint at the threshold even if it makes out a sufficient ground for proceeding against the accused would obviously entail into miscarriage of justice and would offend the legislative mandate and thereby would cause prejudice to the complainant whereas no prejudice would be caused to the accused since he would get an opportunity to challenge the evidence when it is led after the issuance of process.

12. On the facts as alleged in the complaint and the verification it would be manifestly clear that the provisions of section 204 of the Code would come into operation since those allegations do make out a sufficient ground to proceed against the accused for the offences as alleged in the complaint. Consequently, those recitals in the complaint would not justify dismissal of the complaint u/s 203 of the Code of Criminal Procedure on the assumption that no sufficient ground for proceeding has been made out. These are obviously the two sides of the same coin.

13. As regards the field available under the inherent powers u/s 482 of the Code of Criminal Procedure it is well settled as enunciated in *Madhu Limaye Vs. The State of Maharashtra*, and in *L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others*, that such inherent powers should be sparingly used to prevent the abuse of the Court or to secure the ends of justice and thus those should not be allowed to be used as a routine.

14. The guidelines are further enunciated in different ratios all of which need not be reproduced. In *R.P. Kapur v. State of Punjab* AIR 1983 SC 866 three contingencies are carved where inherent powers can be exercised such as when there is a legal bar for instituting the proceeding or where the allegations in the complaint even at its face value do not constitute any offence or when such allegations do constitute an offence but there is no legal evidence or the evidence adduced fails to prove the charge. Obviously the case at hand does not fall in any of these three categories In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, similar criterion has been re-enunciated when it is observed as --

"It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one".

The same ratio enunciates four categories wherein issuance of process may be said to be unjustified namely where the allegations in the complaint even taken at that face value make out absolutely no case or where the said allegations in the complaint are patently absurd and inherently improbable or where the discretion exercised by the Magistrate is capricious and arbitrary or where the complaint suffers from fundamental legal defects. It is manifestly clear that the facts as alleged by the complainant do not cover any of these categories. In *Hareram Satpathy Vs. Tikaram Agarwala and Others*, , the Magistrate had issued process which was quashed by the High Court in the exercise of the powers u/s 482 of the Code which was disapproved of by the Supreme Court when the Magistrate's order was restored when it is observed as :---

"As the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction is very limited the High Court launch a detailed and meticulous examination of the case on merits and set aside the order of Magistrate directing issue of process against certain persons."

15. These and other ratios do apply to the field of the inherent powers u/s 482 of the Code and highlight the restricted field available in that behalf whereas the observations therein do not expand the field under the inherent powers even though some ratios relate to the revisional jurisdiction, though the foundation of consideration while assessing the order of issuance of process may be somewhat identical. It is no doubt true that in a proper case where all the prescription under the guidelines is satisfied then the Court would be fully justified to step in and quash the proceeding exercising the inherent powers if the merits justify and demand. Consequently, therefore the application of the principle would depend on facts and circumstances of individual case. Permissibility to quash a proceeding is expressly prescribed under that provision and therefore it is not suggested that in no case the Court can interfere. However, to justify interference the prescription under the said provisions and under the settled principles should be properly established which can be done only on facts of an individual case and consequently the application depends entirely on facts of each case and no principle of universal application can be laid down. However, the facts as alleged by the complainant in the instant case do not by any yardstick attract the inherent powers or invite quashing of the proceeding. It cannot be said that there has been any abuse of process of any Court which is

required to be prevented or the intervention is necessary to secure the interest of justice when the process has been issued by the learned Magistrate which on the merits of the allegations in the complaint is fully justified. As stated, the accused would get full opportunity to ventilate his grievances and canvass his contentions and to cross-examine the complainant and the witnesses as against which the complaint obviously cannot be outed at the threshold especially when a prima facie case has been clearly made out formulating sufficient ground to proceed against the accused. The contention raised by Shri Desai that this is out and out a civil dispute and that even prima facie no criminal offence has been made out has no substance for the reasons already assigned. Consequently, therefore, the order of issuance of process cannot be up-set.

16. It would not burden the record to refer to one aspect as pointed out by Shri Pareira, the learned Counsel, which is not only relevant but is little disturbing. After the complaint was filed in August 1988 a search warrant was issued and when it was tried to be executed it was revealed that the accused persons have practically closed down their office located at Calcutta whereas the search warrant could be executed only in part at some other places such as Gauhati and Patna though all the relevant documents were not available on those premises. The original accused No. 2 i.e. the second petitioner herein was not available for effecting service of summons and has not been available so far inspite of the best of the endeavours on the part of the complainant. According to Shri Pareira, the learned Counsel, the record further reveals that the case was adjourned from time to time where in October the original accused No. 1 who is petitioner No. 3 in this case had appeared and presented an application before the trial Court for waiver of service of summons against him and his wife original accused No. 2. As stated, inspite of the best of the endeavours accused No. 2 could not be served at all and significantly she never remained present in the trial Court. The case was then fixed some time in November when accused No. 2 was presented when on her behalf an application for exemption was made which was granted only for one day and when it was directed that the said accused should remain present on the next day and so also the original accused No. 1 i.e. the husband was directed to execute the necessary fresh bail bond and to furnish the surety on the next day which was adjourned to 2nd of December, 1988. According to the learned Counsel this two fold obligation as directed by the Court was accepted. However, it was not complied with inasmuch as in between this petition was filed and on a specific motion being made an order was passed by this Court on 1st of December issuing notice before the admission to the complainant and in the meanwhile granting ad-interim stay. However, on the 1st of December itself the learned Advocate representing both the accused applied to the trial Court and the disturbing feature is that in the application it was specifically indicated that this Court had directed the learned Advocate on behalf of the accused to present an application in the trial Court specifically asking for exemption of the accused person and to fix the case some time after 12th of December. The copy of the said application is placed on record as tendered by Shri Pareira in respect of

which there is no dispute or protest raised on behalf of the accused though it was submitted by the learned Counsel for the accused that it may be through some communication gap or misunderstanding that it was so incorporated in the application though in fact it was never so indicated by this Court. This feature and the observations should however need not be confused as putting any blame on the learned advocate appearing on his forum or in the trial Court and there is absolutely no adverse comment against them. It is not necessary to have any further probe in that behalf though it is reiterated and placed on record that no such direction even inferentially much less expressly nor any suggestion was also made in that behalf by this Court and consequently the said recitals in that application are obviously far away from reality. This, however, has been fairly accepted, by the learned Counsel for the petitioner-accused. The fact, however remains that accused No. 2 has been avoiding service of summons and has been stalling the issue of appearing before the trial Court under some pretext even though at some stage an assurance was given to the trial Court in that behalf when the date was fixed on 2nd of December and application was given on 1st of December and the object was thus achieved. The recitals in the said application which are now conceded to be incorrect had obviously synchronised with the date on which as per the assurance given in the trial Court accused No. 2 was to remain present in the Court. It is this feature which aggravates the situation. As alleged the Calcutta office is found closed and the service of summons could not be effected on accused No. 2 at any place. She is the person who has executed the agreement and also participated in the negotiations and representations and thus played an active part as alleged by the complainant. It is only thereafter that an endeavour is made for getting the proceeding quashed. All these features read in proper perspective indicate the anxiety on the part of the accused. However, since on merits it is already held that the trial should proceed further in accordance with law, having regard to this historical part it would be just and proper to direct both the accused persons including the petitioner No. 2 herein to remain present and execute the bond before the trial Court for the purpose of facing the trial. It is only after appearing before the Court that the accused may decide if so advised to move the Court for exemption and it would be for the learned Magistrate to examine that plea if made on its own merits after hearing the complainant. Any such plea for exemption can be made only after appearing before the Court and on executing the necessary bonds. The said accused No. 2 thus would be at liberty to formally move the trial Court and that behalf after she appears in that Court. This would not cause any prejudice or hardship to her, though under the trust of the facts her stance not to appear before the trial Court at all cannot be encouraged. The anxiety of the learned Counsel Shri Pareira that though the complainant has been wronged by the accused persons an odd situation has been created by the accused making the complainant to run after them even to secure their presence cannot be said to be un-founded. At any rate under the peculiar fact and circumstances the minimum that can be directed is that both the accused must appear before the trial Court on the next date.

17. It is clarified that the observations herein above are restricted only to this limited field and should not be confused as the final expression of opinion on merits on any count. It would be before the learned Magistrate to appreciate the evidence that would be led before him and to proceed further in accordance with law in his unfettered discretion which he would be entitled to do even by ignoring all the observations herein above. This would protect the interest of both the sides and would not cause prejudice even to the accused persons.

18. The petition is rejected.

19. Interim stay granted stands vacated.

20. The order of issuance of process against the petitioner-accused persons is endorsed.

21. The said case being Criminal Case no. 96/W of 1988 pending before the learned Additional Chief Metropolitan Magistrate 9th Court, Bandra to proceed further in accordance with law.

22. The complainant as well as all the accused persons to appear before the learned Magistrate on 20th January, 1989, since the case is already fixed by the learned Magistrate on that day.

23. Since the petitioners-accused come from out-station, the hearing of the case is expedited.

24. The learned Counsel for the petitioners-accused on instructions makes a statement that both the accused would appear before the learned Magistrate as directed on 20th of January, 1989.