IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.6 of 2024

1. MRS. RADHA SATISH TIMBLO
MAJOR OF AGE, MARRIED,
OCC: BUSINESS,
R/O: HOUSE NO. 22/339,
MACHADO COVE, DONA PAULA,
ILHAS, GOA. 67 years.

2. MR. CHETAN SATISH TIMBLO,
MAJOR OF AGE, MARRIED,
OCCU: BUSINESS,
R/O: HOUSE NO. 22/339,
MACHADO COVE, DONA PAULA,
ILHAS, GOA. 46 years.

3. MR. ROHAN SATISH TIMBLO,
MAJOR OF AGE, MARRIED,
OCCU: BUSINESS,
R/O: VILLA NO. 502,
NANU BEACH RETREAT,
THONWADDO, BETALBATIM,
SALCETE-GOA, 44 years.

4. MRS. MALLIKA ROHAN TIMBLO,
MAJOR OF AGE, MARRIED,
OCCU: BUSINESS,
R/O: VILLA NO. 502, 43 years.
NANU BEACH RETREAT
THONWADDO, BETALBATIM,
SALCETE-GOA.
Petitioner Nos.2,3 and 4 are represented
through POA holder, i.e. Petitioner No.1. ...PETITIONERS

Versus

1. THE UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF CORPORATE
AFFAIRS, GOVERNMENT OF INDIA,
NEW DELHI.

2. THE REGISTRAR OF COMPANIES
OF GOA, DAMAN AND DIU,
(V.P. KATKAR)
MINISTRY OF CORPORATE
AFFAIRS,
GOVERNMENT OF INDIA,
HAVING ITS OFFICE AT PATTO,
PLAZA, PANAJI-GOA.

3. MR. ANNA CHETAN TIMBLO,
MAJOR OF AGE, MARRIED,
OCCU: BUSINESS,
R/O: HOUSE NO: 69, AQUEM ALTO,
SALCETE, MARGAO-GOA 403-601. ... RESPONDENTS

Mr Devidas Pangam, Senior Advocate with Mr Shubham Priolkar and Mr Parikshit Sawant, Advocates for the Petitioner.

Mr Raviraj Chodankar, Central Government Standing Counsel for Respondent Nos.1 and 2.

CORAM : ASHISH S. CHAVAN, J.

Reserved on : 21st APRIL 2026
Pronounced on : 27th APRIL 2026

JUDGMENT :

1. By way of this Writ Petition, the Petitioners have invoked the inherent jurisdiction of this Court to examine, quash and set aside the order taking cognizance dated 11.12.2014 and the summoning order dated

25.06.2015 passed by learned JMFC, 'D' Court, Panaji in Labour Case No.54/2014/A and all consequential proceedings arising therefrom pending before learned JMFC, 'D' Court, Panaji.

2. The Petitioners before this Court are arraigned as accused in the private complaint filed by the Registrar of Companies under Section 217(3) of the Companies Act, 1956 ('the said Act', for short) for an offence punishable under Section 217(5) of the said Act. The contesting Respondent, i.e. Respondent No.2, is the Registrar of Companies of Goa, Daman and Diu.

3. The chronology of events necessary to determine the issue arising from the present Petition is summarised as under:

(i) The Petitioners herein were the Directors of the Company registered under the name and style of 'M/s. Timblo Private Limited', a private limited Company registered at Panaji, Goa, under the said Act.

(ii) The Respondent No.2, vide private complaint bearing Labour Case No.54/2014/A, dated 11.12.2014, filed before the learned JMFC, 'D' Court, Panaji, sought to initiate criminal proceedings against the Petitioners under Section 217(5) of the said Act.

(iii) The allegation against the Petitioners is that the Petitioners failed to furnish the fullest information or explanation in respect of the remark in the Auditor's report stating that "*the Company has an internal audit system, which needs to be strengthened*".

(iv) The genesis of the aforesaid accusation against the Petitioners arises out of an annexure to the Auditor reports dated 12.09.2007,

20.09.2008 and 11.09.2009, received by the Office of the Respondent No.2 during the process of scrutiny of the company balance sheets of the years 31.03.2007, 31.03.2008 and 31.03.2009, respectively.

(v) On the basis of the aforesaid observation encapsulated in the Auditor's report, a show cause notice dated 09.09.2014 came to be issued against the Petitioners, alleging that the Auditor's report reveals that the Board has failed to furnish the fullest information/explanation on the aforesaid remark. Consequently, the Petitioners were called upon to answer as to why penal action under Section 217(5) of the said Act may not be initiated against them.

(vi) The Petitioners replied to the aforesaid show cause notice vide their reply dated 18.09.2014, *inter alia,* informing Respondent No.2 that the Petitioners are in the process of accounting, finalising in preparation of filing tax audit, etc. and as such sought extension of time to file proper reply.

(vii) Despite the reply of the Petitioners, the Respondent No.2 lodged the complaint referred to hereinabove against the Petitioners.

(viii) On 11.12.2014, the learned JMFC, Panaji Goa, was pleased to take cognizance of the complaint filed at the instance of Respondent No.2 and on 25.06.2015 issued summons to the Petitioners.

(ix) Prior to filing of the said complaint dated 11.12.2014, the Respondent No.2 had lodged another complaint vide Labour Case No.21/2014

(prior complaint) before the learned JMFC, Panaji, against the same Company in its corporate capacity along with its Directors.

(x) It is the case of the Petitioners that the prior complaint was instituted based on the same material facts and circumstances on which the complaint forming the subject matter of the present Petition has been instituted.

(xi) It is further the case of the Petitioners that the prior complaint has been disposed of since the accused therein pleaded guilty and a fine of Rs.7,000/- (Rupees Seven Thousand only) was imposed upon the accused.

4. Heard Mr Devidas Pangam, learned Senior Counsel for the Petitioners and Mr Raviraj Chodankar, learned Central Government Standing Counsel for the Respondents.

5. Rule. The rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.

6. With the assistance of the learned Counsel for the parties, I have perused the record.

7. The Petitioners have challenged the summoning order and the order taking cognizance and the consequential proceedings arising out of the impugned private complaint on several grounds. Firstly, that no offence is made out under Section 217 of the said Act. On behalf of the Petitioners it was urged that the provision mandates that the Board shall furnish fullest

information and explanations only in respect of a reservation, qualification or adverse remark contained in the Auditor's report. However, the remark complained of by the Respondent No.2 to which the Petitioners allegedly failed to give the fullest information is "*the Company has an internal audit system which needs to be strengthened*". It was strenuously urged on behalf of the Petitioners that the aforesaid remark, cannot, by any stretch of interpretation be construed as a "reservation", "qualification" or "adverse remark" within the meaning of Section 217(3) of the said Act. At the highest, the said remark is in the nature of a general observation or recommendation made by the Auditors for improvement of internal processes. Such a remark cannot trigger the statutory obligation contemplated under Section 217(3) of the said Act.

8. Additionally, it was pointed out that the requirement of furnishing explanation under Section 217(3) of the said Act is directed towards the shareholders of the Company and it is to be complied through the Board's report placed before the Annual General Meeting (AGM). The provision does not envisage or mandate furnishing of such explanations to the Registrar of Companies (Respondent No.2). Thus, the entire premise of the complaint proceeds on a fundamental misinterpretation of the statutory scheme. It was further submitted that the initiation of the criminal proceeding at the instance of Respondent No.2 is triggered by the subjective dissatisfaction of the Respondent No.2 with the reply furnished by the Petitioners to the show cause notice. Such dissatisfaction cannot constitute a valid basis for invoking penal provisions and criminal liability cannot be fastened on Directors on

account of an erroneous understanding of statutory requirements by the Regulatory Authority.

9. It was submitted on behalf of the Petitioners that the complaint itself is barred by limitation. Section 217(5) of the said Act describes punishment for non-compliance with sub-sections 1 to 3, which may extend to imprisonment for a term not exceeding six months or a fine or both. In terms of Section 468(2)(b) of the Cr.P.C., no Court can take cognizance of an offence punishable with imprisonment for a term not exceeding one year after the expiry of a period of one year from the date of the offence. Consequently, any complaint under Section 217 of the said Act, must necessarily be instituted within one year from the date on which the alleged offence was committed. It was argued that in the present case, the allegations pertain to the Auditor's report for financial years 2006-07, 2007-08 and 2008-09. Thus, the institution of the complaint on 11.12.2014, after the lapse of one year from the date of the offence, is grossly delayed and barred by limitation. Even assuming that the Respondent No.2 had knowledge of the alleged violation at least by 01.05.2012 (on the basis of the letter dated 01.05.2012 by the Registrar of Companies to the Regional Director, Ministry of Corporate Affairs, seeking scrutiny of documents and, *inter alia*, alleging violation of Section 217(3) of the said Act) the complaint came to be filed only on 11.12.2014, i.e. after a delay of more than two and a half years, which is well beyond the prescribed period of limitation.

10. Lastly, it was also argued on behalf of the Petitioners that the order taking cognizance being the substratum of the initiation of criminal proceedings against the Petitioners, must reveal some application of mind. However, the said order is not only cryptic and unreasoned but also demonstrates non-application of mind by the learned JMFC.

11. Countering these submissions, on behalf of Respondent No.2, it was submitted that the order taking cognizance and consequent proceedings initiated at the instance of Respondent No.2 require no interference. Firstly, it was submitted that the observation in the Auditor's report that the Company has an internal audit system which needs to be strengthened fulfils the ingredients set out in Section 217(3) of the said Act. The aforesaid observation constitutes a qualification/reservation and cannot be brushed aside as a routine or innocuous remark. It was also argued that the aforesaid observation is consistent across multiple years, thereby evidencing a continuing deficiency in the internal audit framework of Petitioners' Company. This aspect is further compounded by the lack of reply to the show cause notice.

12. The argument of the Petitioners that the complaint is barred by limitation is countered on behalf of the Respondents by arguing that the "sanction" to prosecute being a mandatory precondition was granted by a "competent" Authority on 11.06.2014. The same was received by the office of the Respondent No.2 on 16.06.2014. The complaint was thereafter filed on 11.12.2014, well within the prescribed period of limitation. It was sought

to be argued that the period of limitation is to be reckoned from the date of knowledge. However, the "knowledge" would have to be interpreted as actionable knowledge. It was also canvassed that the Registrar of Companies is not empowered to launch prosecution without obtaining prior "sanction" from the Regional Director in the Ministry of Corporate Affairs and hence the computation of limitation commences from 16.06.2014, i.e. the date of receipt of the sanction by Respondent No.2. Lastly, it was submitted that at the stage of issuance of process this Court ought not to conduct a meticulous or elaborate examination of the allegations in the complaint since the challenge to the order taking cognizance and the issuance of process mounted by the Petitioners essentially deals with triable issues.

13. Appreciating the rival contentions of the respective parties, the issue that falls for consideration before this Court is *firstly*, whether the order taking cognizance and the summoning order passed by the jurisdictional Magistrate discloses application of mind as envisaged by law, *secondly,* whether the complaint taken at face value makes out a *prima facie* case for invoking the penal provisions of the Companies Act as alleged and *thirdly,* whether the complaint is barred by limitation.

14. At the outset, it would be necessary to examine the averments in the complaint to see whether they make out a *prima facie* case for attracting offence punishable under Section 217(3), punishable under Section 217(5) of the said Act. The relevant extracts of the complaint dated 11.12.2014 are reproduced herein below:

"4. That it is observed by the Complainant, office of Registrar of Companies, Goa during technical scrutiny under section 234 of the Companies Act, 1956 that from the para 7 of the annexure to the Auditor's Report to the Balance Sheet as on 31.03.2007, 31.03.2008 and 31.03.2009 that company is required to strengthen its internal audit system. In this regard Board failed to furnish fullest information/ explanation on the said remarks pursuant to requirements of sub-section 3 of section 217 of the Companies Act, 1956. Thereby the directors have violated the said provisions and are liable for penal action under sub-section 5 of section 217 of the Companies Act, 1956. Copy of the above Auditor's Report are enclosed as Annexure "A" (for financial year ended on 31 March, 2007), Annexure "B" (for financial year ended on 31 March, 2008) and Annexure "C" (for financial year ended on 31 March, 2009) respectively.

6. That the complainant issued Show Cause Notice No. ROCGDD/SCN/217(3)/Timblo/P3/21/1333, 34, 35, 36, 37 on 09/09/2014 to the Managing Director/ Directors/Officers of the company being accused No.01 to 05 for violation of the provisions of Section 217(3) of the Companies Act, 1956. Reply dated 18/09/2014 is received from the Director of the Company is not found to be satisfactory. Copy of above show cause notice and reply of the Accused are enclosed herewith and marked as Annexure "D" and Annexure "E" respectively.

7. That the Complainant's office received sanction Letter No. RD/STA/234/ Misc/ 2011/ 1864, dated 11/06/2014 16/06/2014 from Joint Director, Office of the Regional Director, Western Region, Mumbai to launch prosecution for violation under section 217 of the Companies Act, 1956 and the default came to the knowledge of the Complainant's office on 16/06/2014. A copy of above sanction Letter is enclosed herewith and marked as annexure "F".”

15. The basis of the allegations against the Petitioners stem from para 7 of the annexure to the Auditor’s report to the balance sheets as indicated in

para 4 (supra). Hence, it would be necessary to reproduce the "offending" part of para 7, which reads as:

> "7. *The Company has an internal audit system which needs to be strengthened."*

16. The genesis of this allegation is seen from the show cause notice dated 09.09.2014 issued by Respondent No.2 against the Petitioners alleging that the Board has failed to furnish the fullest information/explanation on the aforesaid remark. The relevant portion of the show cause notice dated 09.09.2014 is reproduced as under:

> *"5. It is submitted that the genesis of the accusation against the Petitioners arise out of para 7 of the Annexure to Auditor's Report dated 12.09.2007, 20.09.2008 and 11.09.2009, received by the office of the Respondent no.2, during the process of scrutiny of the company Balance Sheets of the year 31.03.2007, 31.03.2008 and 31.03.2009, based on which Show Cause Notice dated 09.09.2014 came to be issued against the Petitioners alleging that the Board has failed to furnish the fullest information/explanation on the said remark at para 7 of the Annexure to the Auditor's Report. The relevant portion of the Show Cause Notice dated 09.09.2014 is reproduced hereunder:*
>
> > *"AND WHEREAS it was observed from the para 7 of the annexure to the Auditor's Report to the Balance Sheet as on 31.03.2007, 31.03.2008 and 31.03.2009 that company is required to strengthen its internal audit system. In this regard Board fails to furnish fullest information/ explanation on the said remarks pursuant to requirements of sub-section 4 of section 217 of the Companies Act, 1956. Thereby the directors have violated the said provisions and are liable for penal action under sub-section 5 of section 217 of the Companies Act, 1956."*

17. Firstly, save and except for the aforesaid reference to para 7 of the annexure to the Auditor's report, there is no other basis for attracting the offence defined under Section 217(3) of the said Act and made punishable under Section 217(5). It would not be out of place, therefore, to reproduce Section 217 of the said Act.

> *"**217. Board's report**. - (1) There shall be attached to every balance-sheet laid before a company in general meeting, a report by its Board of directors, with respect to-*
>
> *(a) the state of the company's affairs;*
>
> *(b) the amounts, if any, which it proposes to carry to any reserves in such balance-sheet;*
>
> *(c) the amount, if any, which it recommends should be paid by way of dividend;*
>
> *[(d) material changes and commitments, if any; affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of report;]*
>
> *[(e) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.]*
>
> *(2) The Board's report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year-*
>
> *(a) in the nature of the company's business;*
>
> *(b) in the company's subsidiaries or in the nature of the business carried on by them; and*

(c) generally in the classes of business in which the company has an interest.

(2A) (a) The Board's report shall also include a statement showing the name of every employee of the company who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than [such sum as may be prescribed]; or

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part, of that year, at a rate which, in the aggregate was not less than [such sum per month as may be prescribed; or]

[(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, on the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent, of the equity shares of the company.]

(b) The statement referred to in clause (a) shall also indicate,-

(i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

(ii) such other particulars as may be prescribed.

Explanation. "Remuneration" has the meaning assigned to it in the explanation to section 198.]

'[(2AA) The Board's report shall also include a Directors' Responsibility Statement, indicating therein,-

(i) that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(ii) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period;

(iii) that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(iv) that the directors had prepared the annual accounts on a going concern basis.]

[(2B) The Board's report shall also specify the reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A.]

(3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid, or in cases falling under the proviso to section 222, in an addendum to that report, on every reservation, qualification or adverse remark contained in the auditors' report.

(4) The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance-sheet and the profit and loss account of the company by virtue of sub-sections (1) and (2) of section 215.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [twenty thousand rupees], or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully:

Provided further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defence to prove [3][***] that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty.

(6) If any person, not being a director, having been charged by the Board of directors with the duty of seeing that the provisions of sub- sections (1) to (3) are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [2][twenty thousand rupees], or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully."

18. Examining the Scheme of Section 217 of the said Act, it is clear that the requirement of furnishing explanations under sub-section 3 of Section 217 is directed towards the shareholders of the Company and is to be complied with through the Board's report placed before the annual general meeting. It is evident that this provision does not envisage furnishing of explanations to the Registrar of Companies. Now juxtaposing paragraph 6 of the complaint reproduced hereinabove, it is seen that the Respondent No.2 has premised the entire criminal complaint on the fact that the reply of the Petitioners to the show cause notice was not found to be satisfactory. It is a settled position of law that initiation of prosecution cannot be predicated solely on the subjective dissatisfaction of the Respondent No.2 with the reply of the Petitioners to the show cause notice. Criminal liability can only be fastened against the

Petitioners if they are independently found to be in violation of Section 217(3) of the said Act.

19. Thus, the core issue that arises is whether paragraph 7 of the annexure to the Auditor's report can, by any stretch of interpretation, be construed to mean a "**reservation**", "**qualification**" or "**adverse remark**". Even a liberal construction of para 7 as reproduced hereinabove would reveal that the remark which forms part of the Auditor's report addressed by internal Auditors to the Company and states that the Company **has an internal audit system**, ***which needs to be strengthened***. The first part of the remark, thus, is a positive statement that the Company has an internal audit system. The second part is, at best, a general observation or recommendation made by the Auditors for improvement of internal processes. I find force in the submission of the Petitioners that the aforesaid remark is generic and advisory in nature. Such remarks are routinely made by Auditors as part of best governance practices and do not, by themselves, indicate any deficiency attracting penal liability. Thus, this Court finds that the averments in the complaint and its annexures do not make out any offence within the definition of Section 217(3) of the said Act. Needless to say, as a corollary thereof, Section 217(5), which penalises the offence defined under Section 217(3), cannot be attracted. In other words, the Respondent No.2 has failed to make out an offence punishable under Section 217(5) of the Companies Act, 1956.

20. Dealing with the argument that the complaint was barred by limitation, the Petitioners in their submissions in rejoinder, submitted that a

plain reading of Section 217 of the said Act would demonstrate that no prior sanction is required for initiating prosecution under the said provision. On behalf of the Respondents, a feeble attempt was made to rely on Departmental Circular No.3/76/2015-CL.II dated 20.06.2016, a Notification dated 31.12.2015 and another communication dated 01.04.1976 issued by the Ministry of Law, Justice and Company Affairs. The notification dated 31.12.2015 is issued by the Ministry of Corporate Affairs. An attempt was made by the counsel for Respondents to demonstrate that the aforesaid documents stipulate the requirement for obtaining 'sanction' to launch prosecution under Section 217 of the said Act. This was used to buttress the submission on behalf of the learned counsel for the Respondents that the 'sanction' was received by them from the Joint Director, Office of the Regional Director, Western Region, Mumbai on 16.06.2014, thereby bringing the complaint within limitation. This submission was countered by the Advocate for the Petitioners strenuously by way of three-fold submissions. *Firstly*, he would submit that there is no statutory requirement for obtaining a sanction to launch prosecution under Section 217 of the said Act, either in the Companies Act itself or any other statute. *Secondly*, he would submit that there is not even a passing reference to Section 217 of the said Act, nor any reference to the Petitioners is made in these documents sought to be relied upon by the Respondents. *Thirdly*, he would submit that even assuming that these documents qualify to be 'sanction', they do not reveal any application of mind as envisaged while granting sanction for prosecution. Examining this aspect, I find force in the argument of the Petitioners that there is no statutory

requirement for obtaining 'sanction' to launch prosecution under Section 217 of the Companies Act, 1956 and hence, there would be no question of the delay in obtaining 'sanction' to launch prosecution. Even otherwise, the documents relied upon on behalf of the Respondents seem to be Circulars/Notifications/internal communications at the highest. It is evident from a bare perusal of these documents that by no stretch of interpretation can they be termed as any 'sanction'. There is no reference either of the Petitioners nor any provision of law granting 'sanction' in the aforesaid documents. Thus, the argument on behalf of the Respondents that the delay was occasioned on account of the requirement to obtain 'sanction' and that the 'sanction' was received on 16.06.2014, is not legally tenable and hence, must fail. Even otherwise, the reliance placed by the learned Advocate for the Respondents on Section 470(3) of Cr.P.C. for exclusion of time is misconceived and inapplicable to the facts of the present case. It is further pertinent to note that the complaint was filed in the year 2014. The present Petition was filed in the year 2021. However, there was no attempt or effort on the part of the Respondents to seek condonation of delay by way of any application. In such circumstances, this Court is constrained to accept the contention of the Petitioners that the complaint is barred by limitation.

21. Finally, dealing with the argument of the Petitioners that the order taking cognizance dated 11.12.2014 requires to be set aside since the same does not reflect any application of mind, which is a *sine qua non* for taking cognizance of an offence under Section 190 of Cr.P.C. Since the learned JMFC has taken cognizance of a private complaint filed by the Respondents,

Section 190(a) of Cr.P.C. would be triggered. It is a settled position of law that although the order taking cognizance need not contain detailed reasons, it must at least reflect some application of mind on the part of the learned Trial Court. The order taking cognizance which is impugned by the Petitioners, is to be found cumulatively across three dates as seen from the roznama of JMFC, Panaji, Goa dated 11.12.2014, 22.06.2015 and 25.06.2015, which is reproduced herein below:-

> "11.12.2014 – Before Smt. Saee Prabhudessai, Judicial Magistrate First Class at Panaji 'D' Court.
> Received complaint U/S 217(5) of the Companies Act, 1956 for violation.
> List of documents.
> List of witnesses.
> Placed for order.
> 22.06.2015 – Taken up today
> Issue notice to complainant and summons to accused for appearance r/o
> JMFC 'D' Court
> 25.06.2025 – S/S issued"

From a bare perusal of the aforesaid roznamas, on 11.12.2014, the learned JMFC received the complaint filed by the Respondents under Section 217(5) of the Companies Act, 1956. The next roznama dated 22.06.2015 records that a notice was issued to the complainant and the last roznama dated 25.06.2015 only notes that summons were issued. It is evident that there is no application of mind or any reflection thereof to the facts of the complaint on the part of the learned JMFC either before taking cognizance of the offence or before issuing summons/process to the Petitioners. Here a profitable reference can be made to the Judgment of the Hon'ble Supreme Court in the

matter of ***State of Gujarat V/s. Afroz Mohammed Hasanfatta***[1], which at paragraph 17 observes thus:

> *"17. After referring to Bhushan Kumar v. State (NCT of Delhi)[2], Chief Enforcement Officer v. Videocon International Ltd.[3] and other decisions, in Mehmood Ul Rehman v. Khazir Mohammad Tunda[4], it was held as under: (Mehmood Ul case, SCC p. 429, para 20).*
>
> > *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate[5] to set in motion the process of criminal law against a person is a serious matter."*

Thus, in the light of the observations of the Hon'ble Supreme Court and in the facts of the present case, this Court holds that the order taking cognizance and order issuing process, both are without application of mind and hence deserve to be set aside.

[1] (2019) 20 SCC 539
[2] (2012) 5 SCC 424
[3] (2008) 1 SCC (Cri) 471
[4] (2015) 12 SCC 420
[5] (1998) 5 SCC 749

22. From a conspectus of the aforesaid facts and circumstances, this Court holds that the allegations in the complaint, even if taken at face value, do not disclose the commission of any offence under Section 217 of the Companies Act, 1956. The initiation and continuation of the impugned proceedings in the absence of the ingredients of the offence amounts to an abuse of the process of law. The complaint, which forms the basis of the impugned order issuing process, is barred by limitation and hence not maintainable. Apart from the above reasons, the order taking cognizance and the subsequent order issuing process are bereft of application of mind. In view thereof, the order taking cognizance dated 11.12.2014, the summoning order dated 25.06.2015 passed by learned JMFC, 'D' Court, Panaji, in Labour Case No.54/2014/A and all consequential proceedings arising therefrom pending before learned JMFC, 'D' Court, Panaji, are quashed and set aside.

23. The Criminal Writ Petition No.6 of 2024 is allowed. Rule is made absolute in the aforesaid terms.

ASHISH S. CHAVAN, J.