

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 652 OF 2012

Shri Raju Nayak,  
51 years, Editor Lokmat,  
having its office at 101, 1<sup>st</sup>  
Floor, Rizvi Chambers,  
Caetan Albuquerque  
Road, Panaji-Goa.

... Petitioner

*V e r s u s*

1. Mr. Kashinath Jairam  
Shetye, Major of age,  
Occupation Service,  
resident of Ground floor,  
Babino Building, Alto  
Fondvem, Ribander,  
Tiswadi, Goa.

2. Mr. chetan Govekar,  
Major of age, Occupation,  
Service, Resident of Third  
floor, Wadji Building, St.  
Inez, Panaji, Tiswadi, Goa.

3. State of Goa,  
Represented through  
Public Prosecutor,  
Panaji – Goa.

... Respondents

Mr. V. A. Lawande, Advocate for the Petitioner.

Mr. Ryan Menezes, Advocate for the Respondent nos.1 and 2.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondent no.3.

**Coram :-** **M. S. SONAK &**  
**M. S. JAWALKAR, JJ.**

**Date :** **10<sup>th</sup> December, 2019.**

**ORAL JUDGMENT** (*Per M. S. Sonak, J.*)

**1.** Heard Mr. V. A. Lawande, learned Counsel for the petitioner, Mr. Ryan Menezes, learned Counsel for the respondent nos.1 and 2 and Mr. Faldessai, learned Additional Government Advocate for the respondent no.3.

**2.** On 10<sup>th</sup> January, 2013, this Court issued Rule and granted interim relief in terms of prayer clause (b) of this petition, thereby, staying further proceedings in Criminal Misc. Application No. 66 of 2011 pending before the J.M.F.C., Pernem. The matter has now come up for final disposal.

**3.** Mr. Lawande, the learned Counsel for the petitioner submits that there is no provision under the contempt of Courts Act, 1971 or the Rules made thereunder to restore a petition for contempt once the same is dismissed for non-prosecution. He, therefore, submits that the impugned order dated 29<sup>th</sup> February, 2012, by which, the learned Judicial Magistrate at Pernem has restored the Contempt Petition, which was already dismissed for non-prosecution, is without jurisdiction or in excess of jurisdiction vested in the learned Judicial Magistrate.

**4.** Mr. Lawande, the learned Counsel, without prejudice to the aforesaid, submits that in this case, the petitioner had made an innocent publication without knowledge of pending proceedings. He submits that the petitioner has explained this position in paragraph 10 of the reply dated 17<sup>th</sup> December, 2011, and further has expressed regrets as well as apology for the inadvertence in the publication which is alleged to be contumacious. Mr. Lawande, the learned Counsel submits that

in the peculiar facts of the present case, it would be in the interest of justice if such explanation is accepted and the contempt proceedings pending before the learned Judicial Magistrate First Class are ordered to be closed.

5. Mr. Ryan Menezes, the learned Counsel for the respondent nos.1 and 2 by relying upon the decision of the Division Bench of this Court in the case of *Rajaram Waman Masurkar vs. Lokmanya Shikshan Prasarak Mandal, Wadabali & Ors* reported in *2008 (1) BCR 422*, submits that the learned Judicial Magistrate had ample powers to order restoration, once sufficient cause was made out. He, therefore, submits that there is no jurisdictional error in the impugned order.

6. Mr. Menezes, the learned Counsel, however, without prejudice submits that if the regrets and the apology expressed by the petitioner in paragraph 10 of the reply dated 17.12.2011 is accepted by this Court, then respondent nos.1 and 2 would leave the issue to this Court.

7. In the peculiar facts of this case, it is really not necessary to go in to the issue as to whether the Judicial Magistrate First Class indeed had the power to order the restoration of the Contempt Petition which came to be dismissed for default. The Division Bench of this Court, has no doubt, held that such power is available. However, Mr. Lawande, the learned Counsel for the petitioner submits that such decision was in the context of proceedings before the High Court. According to us, it is really not necessary to go into these distinction or rather go into this issue at all. This is on account of the peculiar circumstances of the present case, in which, the petitioner, in any case, has offered an explanation and further expressed his regrets as well as apology.

8. It is settled position in law that contempt is basically a matter between the contemner and the Court. The role of the petitioner or the applicant is basically to point out the material on basis of which it is suggested that a contempt has been

committed. This, the respondent nos.1 and 2, have done before the learned Judicial Magistrate, First Class.

9. The petitioner, in paragraph 10 of his reply dated 17.12.2011 whilst answering the charge of contempt has stated the following :

*“10. With reference to para 6 seems, the respondent did not have any knowledge of pendency of the matter before this Hon'ble Court. The news item published on 6/7/11 was in ignorance of the pendency of such application before this Hon'ble Court. If the respondent had any idea or knowledge about the pendency of such an application before this Hon'ble Court the respondent would not have published the news as published on 6/7/11. The respondent regrets and expresses an apology for such inadvertence which has resulted in issuing the said items on account of active concealment by the applicant of such proceedings to the respondents.”*

**10.** Section 3 of the Contempt of Courts Act, provides that a person shall not be guilty of contempt of Court on the ground that he has published whether by words, spoken or written or by signs, or by visible representations or otherwise, any matter which interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

**11.** In this case, the petitioner has categorically stated on oath that he was not aware of the pendency of the proceedings before the Court. In any case, without prejudice, he has expressed regrets and also tendered an apology for such inadvertence which resulted in making the publication which is alleged to be contumacious.

**12.** According to us, looking to the categorical averments in paragraph 10 and by accepting the regrets and the apology, the

proceedings before the learned Judicial Magistrate First Class deserves to be closed.

**13.** The record indicates that by virtue of our interim order dated 10.01.2013, the proceedings before the learned Judicial Magistrate, in any case, have been stayed. Taking into consideration the reply on behalf of the petitioner, really, no purpose will be served in restoring the proceedings before the learned Judicial Magistrate at this point of time. We also, in the facts and circumstances of the present case, appreciate the reasonable stance adopted by and on behalf of respondent nos.1 and 2 in this petition.

**14.** Therefore, though we do not go into the issue as to whether any case is made out to interfere with the impugned order, we close the proceedings Criminal Misc. Application No. 66 of 2011 pending before the learned Judicial Magistrate First Class, at Pernem, Goa and dispose off the same. The learned Judicial

Magistrate to make a formal endorsement of disposal in Criminal Misc. Application No. 66 of 2011.

**15.** The Rule in this petition is disposed off in the aforesaid terms.

**16.** There shall be no order as to costs.

**M. S. JAWALKAR**

**M. S. SONAK, J.**

arp/\*