

2. This criminal revision application is filed challenging an order dated 7 May 2022 passed by the learned Principal District and Sessions Judge, Panaji, whereby an application for condonation of delay filed by the applicant in filing an application for review petition of the order passed in Criminal Revision Application No. 27/2019, which was decided by the learned District Judge on 20 September 2019 has been dismissed.

3. It needs to be noted that the applicant had instituted proceedings under Section 156(3) of the Code of Criminal Procedure (Cr.P.C) before the learned Judicial Magistrate First Class (JMFC) at Mapusa in Criminal Miscellaneous Application No. 498/2018/D, which came to be rejected by an order dated 16 March 2019 passed by the learned JMFC. Against such order, the applicant had approached the learned Sessions Judge, North Goa in Criminal Revision Application No. 27/2019, which also came to be rejected by an order dated 20 September 2019. The learned Sessions Judge while confirming the findings as recorded by the learned JMFC, observed that no case was made out by the applicant so that the process of criminal law could be set into

motion. In regard to the allegations as made by the applicant, it observed that the dispute is clearly of a civil nature.

4. Being aggrieved by such judgment and order dated 20 September 2019 passed by the learned Sessions Judge, the applicant approached this Court by filing Criminal Writ Petition No. 222/2019, which was partly allowed by the learned Division Bench vide order dated 11 February 2020, however, confirming the findings recorded by the learned JMFC as also the findings of the learned Sessions Judge by making the following observations:

“6. Upon consideration of the rival contentions, we are of the opinion that the view taken by the two Courts in the impugned orders cannot be said to be suffering from any perversity as such, or any jurisdictional error. The learned Sessions Judge has considered the material, in some detail, and thereafter, concluded that the ingredients of the various offences alleged by the Petitioner have not been made out and, in any case, the dispute has essentially a civil profile.

7. We have also considered the material place before us and given anxious consideration to the submissions made by the Petitioner who appears in person. It is true that at the stage of making a complaint, there is no burden on the complainant

to prove his allegations beyond reasonable doubt. It is also true that at this stage, it is not for the Court to scan the material on record with a view to find out whether there is truth in the allegations made. However, the two Courts have basically gone by the allegations made in the complaint by treating the same as substantially correct. Despite such exercise, the two Courts have concluded that the vital ingredients of the criminal offences alleged by the Petitioners, cannot be said to have been made out. More than that, we find that the complaint of the Petitioner has essentially a civil profile.

8. The Petitioner has already instituted a civil suit to seek redressal in the matter of his allegations. It is true that the act can have both, criminal as well as civil profile. However, in a matter where the profile is predominantly civil, ordinarily there is no point in permitting criminal prosecution to proceed. It is trite that criminal proceedings cannot be used to secure settlement of civil disputes or disputes which have predominantly a civil profile.”

5. This Court clearly observed that the complaint of the applicant has essentially a civil profile, for which, the applicant had already instituted a civil suit. This Court thus disposed of the petition clarifying that the observations made by the learned JMFC are required to be construed in the context of the proceedings

under Section 156(3) of Cr.P.C. The observations in that regard as made in paragraphs 11 and 12 read thus.

“11. Accordingly, though we are not interfering with the impugned orders, we clarify that none of the observations in the impugned orders should be taken into account in the civil proceedings instituted by the Petitioner. The civil proceedings will have to be decided on their own merits and in accordance with law on the basis of the evidence which the parties will produce before the Civil Court. We clarify that the observations in the impugned orders were made and are liable to be construed only in the context of deciding the Petitioner's application under Section 156(3) of Cr.P.C. and not for any other purpose.

12. Accordingly, this Petition is partly allowed in the aforesaid terms. There shall, however, be no order as to costs.”

6. After the above criminal writ petition was disposed of by the Division Bench of this Court, the applicant on 8 March 2022 approached the Court of the learned Principal District and Sessions Judge by filing Criminal Miscellaneous Application No. 27/2022, (being the application in question on which the impugned order is passed) praying for condonation of delay to file a review petition, seeking a review of the order dated 20

September 2019 passed by the learned District Judge. This despite the fact that the same had attained finality in view of the orders passed by the Division Bench of this Court in Criminal Writ Petition No. 222/2019, wherein the Division Bench did not interfere in such orders. The learned Principal District and Sessions Judge considering the fact that the writ petition filed by the applicant itself was disposed of by the Division Bench against the order passed by the learned Sessions Judge dated 20 September 2019, as also, the fact that the review application being filed after a substantial delay, observed that it would not be appropriate to condone the delay and accordingly, dismissed the criminal miscellaneous application by order dated 7 May 2022.

7. Mr. Arun Kumar Sharma, applicant in person would submit that the order dated 20 September 2019 passed by the learned Sessions Judge, confirming the findings recorded by the learned JMFC is perverse. It is contended that number of documents are not taken into consideration in coming to the conclusion that the revision application as filed was maintainable. It was accordingly submitted that there was substance in the review application filed by him and for such reason, the learned Principal District and

Sessions Judge, ought to have condoned the delay. It is submitted that the Court ought to have taken into consideration the period of pandemic as also that, he was pursuing the proceedings before this Court in Criminal Writ Petition No. 222/2019 and for all these reasons, the application for condonation of delay ought to have been allowed.

8. On the other hand, Ms. Kenny learned Counsel for respondent nos. 4 and 5 has opposed the present proceedings to contend that the view taken by the learned Courts is correct in the facts and circumstances of the case. It is submitted that once the Division Bench of this Court has not entertained the challenge against order dated 20 September 2019 passed by the learned Sessions Judge in Criminal Revision Application No. 27/2019, it was not open for the applicant to re-approach the learned Principal District and Sessions Judge in review petition and re-open the same, as the said order had attained finality and more particularly, as the the said order had merged with the order passed by the High Court.

9. Having perused the orders passed by the learned JMFC dated 16 March 2019 as also the orders passed by the learned Sessions

Judge on 20 September 2019 and the order dated 11 February 2020 passed by the Division Bench of this Court, which did not entertain the applicant's challenge to the order dated 20 September 2019 passed by the learned Sessions Judge, in my opinion, the learned Sessions Judge for the reasons as recorded in the impugned order dated 7 May 2022 has correctly rejected the applicant's application for condonation of delay. This on two basic counts, **firstly**, that the order dated 20 September 2019 passed by the learned Sessions Judge was assailed by the applicant before the Division Bench of this Court in Criminal Writ Petition No. 222/2019, which came to be adjudicated and the challenge as raised by the applicant to the concurrent findings of the Courts below, namely, the learned JMFC and the learned Sessions Judge came to be confirmed by the Division Bench of this Court by making the observations as noted above. As such, the applicant had no cause of action whatsoever to approach the learned Principal District and Sessions Judge praying for review of the order. Secondly, the learned Principal District and Sessions Judge in paragraphs 4 and 5 has correctly observed that the said order stood merged with the order passed by the Division Bench of this Court and there is no question of review being maintainable.

10. Even otherwise, considering the order passed by the Division Bench of this Court in Criminal Writ Petition No. 222/2019, it is crystal clear that this Court had confirmed the findings recorded by both the Court below, thus, clearly indicating that the orders of the learned District Judge on the revision had attained finality, hence, for such reason, no review of the said order could be sought for.

11. I find no error or much less perversity in the view taken by the learned Principal District and Sessions Judge in dismissing the application for condonation of delay. The criminal revision application is accordingly dismissed.

G.S. KULKARNI, J.

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