

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 73 OF 2022**

Shaikh Mohammed Tauseef

Rep. by his Attorney Shaik Mohammed Ejaz. Petitioner

VERSUS

M/s. Gogi Constructions & others. Respondents.

Mr. Ravi Gawas, Advocate for the Petitioners.

**CORAM : M.S. Sonak &
R.N. Laddha, JJ.**

DATE : 11th July 2022

ORDER :

1. Heard Mr. Ravi Gawas for the Petitioner.
2. The Petitioner had instituted two criminal complaints against M/s. Gogi Construction and its Partners, i.e., Respondents No.1 to 4 under Section 138 of the Negotiable Instruments Act, 1881 (said Act), registered as Criminal Case Nos. 161/Ni/OA/2016/A and 162/Ni/OA/2016/A.
3. The Petitioner has pleaded that on 5th March 2021, Judicial Magistrate First Class at Quepem, A Court (JMFC) convicted the accused persons for the offense under Section 138 of the said Act; directed them to pay the cheque amount, and sentenced them for one-month imprisonment, in default of payment for six months simple

imprisonment. However, on the same day, the accused applied for suspension of sentence. Accordingly, the JMFC promptly suspended the sentence for 30 days to enable the accused persons to institute an appeal against the conviction.

4. The Petitioner has pleaded that on 28th May 2021, the Petitioner applied for urgent certified copies of the Judgments and Orders made in both the cases against receipt Nos. 18882 and 18883 dated 28/5/2021. The Petitioner visited the Court several times to collect the certified copies. Still, the staff always informed the Petitioner that the Judgments were not ready and that the certified copies would be supplied after 15 days. Additionally, the Petitioner has pleaded that the Judgments have not even been uploaded on the website of the Court.

5. The Petitioner, therefore, wrote to the Principal District Judge, South Goa, at Margao on 25th October 2021, but there was no response. The Petitioner, by his application dated 9th July 2021, in both the cases, requested the JMFC to issue a non-bailable warrant against the accused persons. But such applications are not disposed of and are still pending.

6. The Petitioner has pleaded that, to his surprise, the accused persons instituted Criminal Appeals No.52/2021 and 53/2021 before the Additional Sessions Judge (DJ-2), South Goa at Margao, without certified copies of the Judgments and Orders convicting them.

Accordingly, the Office of the Sessions Judge, South Goa, at Margao has registered these two appeals. Though the appeal Court grants no interim relief, the accused persons remain at liberty despite the orders of conviction and sentence only because the JMFC has, to date, not furnished the certified copies of her Judgments and Orders.

7. Since the above situation was quite disturbing, we, by our Order dated 4th July 2022, called for a report from the Principal District Judge, South Goa latest by 8th July 2022, to ascertain the position. As a result, the Principal District Judge, South Goa, has submitted a report dated 7th July 2022, substantially confirming all that the Petitioner has pleaded.

8. The report confirms that the JMFC, by her Judgment and Order dated 5th March 2021, convicted and sentenced the accused persons but then suspended the sentence on the accused persons' application. Accordingly, the accused persons applied for certified copies of the Judgments and Orders dated 5th March 2021 on the same day, i.e., on 5th March 2021. On this application, the JMFC passed an order dated 8th March 2021 for issuing certified copies by giving the date as 10th March 2021.

9. The report states that no certified copy was issued on 10th March 2021. The accused persons preferred Criminal Appeals No.52/2021 and 53/2021 to the Sessions Court without certified copies of the

impugned Judgments and Orders. They, however, filed an undertaking/application for production of the certified copies no sooner than the same were received or uploaded on the CIS.

10. The Appeal Court called for record and proceedings on 21st February 2022. Because the same was not transmitted, the Appeal Court sent a reminder on 8th March 2022, to the JMFC. This was followed by reminders on 9th March 2022 and 5th April 2022. Yet another reminder was issued on 18th April 2022. Despite all these reminders, the JMFC neither forwarded the records nor did she issue the certified copies of the Judgments and Orders dated 5th March 2021.

11. On 13th June 2022, the Appeal Court issued another reminder to the JMFC. A further reminder followed this on 21st June 2022. However, despite these reminders, neither were the records transmitted nor were the certified copies of the Judgements and Orders dated 5th March 2021 made available.

12. On 5th April 2021, the Principal District Judge held a surprise inspection in the Court of JMFC at Quepem. During this inspection, it was observed that Criminal Case Nos.161/Ni/2016/A and 162/Ni/2016/A were disposed of on 5th March 2021/8th March 2021. However, no judgments were found in the records. Only roznama

showed that the matter was disposed of, and the accused persons were convicted of the offense punishable under Section 138 of the said Act.

13. The inspection report records that upon inquiry with the Stenographer of the concerned Court and on perusal of the steno book, it was observed that the Judgments were neither dictated to the concerned steno nor found ready and duly signed as on the said date. Certified copy applications were verified, and it was found that the Advocate filed two applications for the accused persons seeking urgent certified copies. On such applications, an order "issue" dated 8th March 2021 passed and signed by the concerned Judge to issue a certified copy. There was no further order on these applications to extend the time for the issue of certified copies.

14. The Principal District Judge, on the following day, i.e., 6th April 2021, wrote to the JMFC directing her to clarify the above irregularities. Directions were also issued to the JMFC to complete the criminal cases' judgments and issue certified copies immediately. The JMFC was directed to report compliance and was informed that the matter would be reported to the Guardian Judge if this was not done. A copy of this letter dated 6th April 2021 is annexed to the report of the Principal District Judge.

15. On 23rd April 2021, since there was no response from the JMFC, the matter was reported to the Registrar General, High Court of

Bombay, through a proper channel, i.e., the Registrar (Administration), High Court of Bombay, at Panaji. The Principal District Judge has reported that on 25th October 2021, on receipt of a complaint, he requested the JMFC to expedite the matter. The Principal District Judge has stated that on 27th October 2021, yet another letter was sent to the JMFC. However, no response was received from the JMFC.

16. Along with the report, the Principal District Judge has enclosed roznamas, letters, and reminders addressed from time to time to the JMFC.

17. Section 353(1) of Cr.P.C. provides that the judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the Presiding Officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, by delivering the whole of the judgment; or by reading out the whole of the judgment; or by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

18. Section 353(4) of Cr.P.C. provides that where the judgment is pronounced in the manner specified in clause (c) of sub-section (1),

the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

19. The statutory provisions apart, it is quite elementary that a certified copy of the Judgment and Order, mainly where the accused persons are convicted, must be made available to the parties within a reasonable period. However, this is a case where such Judgments were pronounced on 5th March 2021, and even after 16 months, the certified copies are not made available by the JMFC. At least, *prima facie*, it is apparent that the JMFC has not bothered to dictate or otherwise prepare such Judgments and orders. This is quite serious.

20. Therefore, we hereby direct the Judicial Magistrate First Class, "A" Court at Quepem to provide the Petitioner as well as the accused persons the certified copies of the Judgments and Orders dated 5th March 2021 within a maximum period of 10 days from the date of receipt of an authenticated copy of this Order. The Registry to ensure that an authenticated copy of this Order is served upon the JMFC at Quepem at the earliest against her endorsement of receipt. The copy may be served through the Principal District and Sessions Judge, South Goa. The JMFC at Quepem should file a compliance report in this case on or before 7th September 2022.

21. This Order and the report of the Principal District Judge must be placed before the Registrar (Admin) to enable him to do the needful on the administrative side by following the law.

22. This Petition is disposed of with the above directions. Accordingly, there shall be no order for costs.

R.N. LADDHA, J.

MAHESH S. SONAK, J.

SANTOSH S MHAMAL

 Digitally signed by SANTOSH S MHAMAL
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