

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 37 OF 2001.

STATE OF GOA

...Appellant.

VS

VENKATESH MAHATURE

...Respondent.

Mr. S. G. Bhobe, Public Prosecutor, Advocate for the appellant.

CORAM: MANISH PITALE, J.

Date: 28th FEBRUARY, 2022

P.C.

This is an appeal pending before this Court since the year 2001. A perusal of the papers shows that incident in question in the present case took place as far back as on 8.7.2000, on the basis of which the respondent was prosecuted for having committed an offence under Section 326 of the Indian Penal Code(IPC). Upon the filing of the chargesheet and trial being conducted, by a judgment and order dated 14.3.2001, the Court of the Judicial Magistrate, First Class, Vasco-da-gama acquitted the respondent as the prosecution failed to prove its case beyond reasonable doubt.

2. This appeal along with the application for leave to appeal was presented before this Court. On 18.6.2021, this Court passed

an order of "Admit". Thereafter, the appellant/State was expected to serve the respondent(original accused). But the record shows that State was unable to serve the respondent, as a consequence of which non-bailable warrants were issued against the respondent.

3. On 15.2.2016, this Court took note of the aforesaid facts, and while adjourning the appeal observed as follows:-

4. *Considering the serious nature of the charge and also observations of the learned Magistrate in the impugned judgment, I find that State must give its thoughtful consideration to the expeditious disposal of this appeal. Expeditious disposal of the appeal will not be possible unless and until the State makes serious efforts in procuring the presence of the respondent before this Court. The report of Mormugao Police Station, as seen from the endorsement dated 11/2/2016 made in the roznama, shows that the respondent has left his address long back and has gone to his native place. Saying so in the report submitted regarding non-execution of the non-bailable warrant issued by this Court is not enough. The concerned police station, Police Station Mormugao in this case, ought to have gone further in ensuring that the warrant issued by this Court was duly executed. No such effort seems to have been carried out by the concerned police station and the result is that the appeal filed by the State on behalf of the police station Mormugao is pending for its disposal. In the circumstances, I would only urge the State as well as all concerned authorities including Superintendent of Police, South Goa to pay their due attention to the facts stated earlier and see that the non-bailable warrant issued by this court against the respondent/accused is duly executed.*

4. Thereafter execution of the non-bailable warrant was awaited and the subsequent orders show that on number of occasions time was granted to the appellant/State to take necessary steps in the matter, on a few occasions recording that the adjournment was granted as a matter of last chance.

5. By order dated 24.6.2019, this Court recorded that several attempts were made to serve the respondent and to trace him, including by issuing a proclamation for person absconding under Section 82 of the Cr.P.C., yet the respondent could not be served. By the said order, fresh non-bailable warrant was issued to be executed by the Superintendent of Police, District Warangal, which was the last known place of residence of the respondent.

6. Thereafter, this appeal was adjourned on the number of occasions to enable the appellant/State to execute the non-bailable warrant or to serve the respondent or trace him, but, admittedly, the appellant/State was unable to satisfy the requirements of either service of notice on the respondent or execution of non-bailable warrants.

7. Considering the order dated 18.6.2001 whereby this Court admitted the appeal, it is now almost 21 years that this appeal has remained pending before this Court.

8. Despite the number of opportunities granted, the appellant/ State has not been able to take appropriate steps or despite taking steps it has not ensured that the respondent is served with the notice or that the non-bailable warrant is executed.

9. In these circumstances, this Court is of the opinion that no purpose would be served by keeping this appeal pending. Accordingly, it is dismissed for default.

MANISH PITALE J.