

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 26 OF 2022**

Laveen Pillai

... Applicant

Versus

State of Goa, Thr. P. P.

...Respondent

Mr. P. P. Singh, Advocate with *Mr. Devendra Bharadwaj,*
Advocate for the Applicant.

Mr. Nikhil Vaze, Public Prosecutor for the Respondent.

CORAM: B. P. COLABAWALLA, J
DATED: 23rd JANUARY 2023

P.C.

1. The above Criminal Revision Application is taken up for hearing and final disposal with the consent of the parties.
2. The above Criminal Revision Application is filed to challenge the impugned Order dated 14.09.2022, passed by the Judicial Magistrate, First Class, at Mapusa Goa. The impugned Order was passed on an application filed by the prosecution under Section 56 of the Indian Evidence Act.
3. In the impugned Order, the Trial Court was of the opinion that since the subject matter of the Judgment and Order passed by the Motor Accident Claims Tribunal (MACT) in Claim Petition No. 6 of 2015 is the same as the one before the Trial Court, no prejudice would be caused to the parties if the Order passed in the Claim Petition (by

the MACT) is allowed to be produced, even though the findings of the MACT would not bind the Trial Court.

4. A reply was filed by the Accused on 09.09.2022 opposing the application filed by the Prosecution. The reply filed by the Accused *inter alia* submitted that the application was misconceived because Section 56 only talks about a fact judicially noticeable which need not be proved, and which was not the case in the present proceedings. It was the case of the Accused that the law applicable to Civil matters and Criminal matters is vastly different in as much as that Civil matters are decided on the principles of preponderance of probabilities whereas in Criminal matters, the prosecution has to prove its case beyond reasonable doubt. In these circumstances, taking judicial note of the said Order/Judgment passed by the MACT against the Accused was wholly irrelevant and could not be looked into by the Criminal Court whilst trying the Accused, was the case set up before the Trial Court.

5. In this backdrop, the learned Counsel appearing on behalf of the Revisional Applicant (the Accused), submitted that once there is a finding of the Trial Court that the findings of the MACT in Claim Petition No. 6 of 2015 is not binding upon it, there was no question of allowing the Prosecution to produce the order of the MACT so that the Trial Court could take judicial note of the same. He, therefore,

submitted that I ought to interfere with the impugned Order in my revisional jurisdiction.

6. On the other hand, the learned Additional Public Prosecutor for the State submitted that since the impugned Order itself takes note of the fact that the findings of the MACT would not be binding on the Trial Court, no prejudice would be caused to the Accused. He submitted that the arguments available to the Accused under Section 41 to 43 of the Evidence Act, can be expressly kept open to be argued and agitated before the Trial Court. He, consequently, submitted that the Criminal Revision Application deserves to be dismissed.

7. I have heard the learned Counsel for the parties and perused the papers and proceedings in the above Criminal Revision Application. It is now well settled that Civil matters and Criminal matters are decided on a totally different footing. Civil matters are decided on preponderance of probabilities, whereas, in a Criminal matter, the prosecution has to prove its case beyond reasonable doubt. There is every possibility that in a Civil matter, on the basis of preponderance of probabilities, a person may be held liable, whereas the very same person in a Criminal trial, may be acquitted because the Prosecution has not proved its case beyond reasonable doubt. This being the case, I fail to understand why the Trial Court wanted to take judicial note of the Order passed by the MACT. In the Criminal

trial, the Trial Court will have to decide the fate of the Accused based on the evidence that is led before it and not on the basis of any findings given by the MACT in its order dated 21.11.2017. In fact, from the impugned Order itself, it appears that the Trial Court was aware of this distinction as it recorded that the findings of the MACT would not be binding on it. Once this was the finding given by the Trial Court, I fail to understand why it still allowed the application to produce the Judgment and Order passed by the MACT.

8. In view of the aforesaid discussion, I find that the impugned Order requires interference in my revisional jurisdiction. Accordingly, the above Criminal Revision Application is allowed in terms of prayer clause (i) which reads thus :

“(i) The Hon'ble Court be pleased enough to allow the revision application while and quashing and set aside the impugned order dated 14/09/2022 passed by JMFC 'D' Court in IPC/46/2015/'D' Nalima Kankonkar, Mapusa, on exhibit 40-D and the Application filed by the prosecution dated 24/08/2022 may kindly be dismissed.”

9. The above Criminal Revision Application is disposed of in the aforesaid terms.

10. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA
Date: 2023.01.24 15:30:42 +0530'