



Niti

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.64 OF 2022
AND
CRIMINAL MISC. APPLICATION NO.300 OF 2025(F)

Prakash Gawas
Major, Retd. Govt. employee,
Age 65, B/6, Shanti Tower,
St. Paulo, Taleigao,
Tiswadi Goa. ...Petitioner

Versus

1. State of Goa
Through the Public Prosecutor,
With his office at High Court of
Complex, Porvorim, Goa.

2. Chief Secretary,
Govt. of Goa,
With his office at Secretariat,
Porvorim Goa.

3. Director General of Police,
Govt. of Goa
With his office at Panaji-Goa.

4. Police Inspector,
CID, Crime Branch,
Panaji Goa. ... Respondents

Mr S.D. Lotlikar, Senior Advocate with Mr Sarvesh Sawant,
Advocate for the Petitioner.
Mr Pravin Faldessai, Additional Public Prosecutor for
Respondents.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.

DATE : 3rd SEPTEMBER 2025

JUDGMENT : (Per Ashish S. Chavan, J.)

1. By way of the present Writ Petition, the Petitioner has assailed the criminal proceedings pending before the Judicial Magistrate First Class, Panaji, with reference to FIR No.81/2008 dated 20.09.2008, registered by the Panaji Police Station for offences punishable under Sections 177, 182, 192, 204, 405, 409, 464, 468, 469, 471, 477-A, 120-B of IPC against the Petitioner, who is the sole accused.

2. The facts which are germane to the Petition can be summarised as under:

(i) An FIR came to be registered against the Petitioner for entering into a criminal conspiracy with the allegation that the Petitioner, who was holding the post of Head Clerk in the Office of the Superintendent of Police, North Goa, Panaji, was instrumental in appointing a particular candidate to the post of PSI, reserved for the children of freedom fighters and hence he had committed a fraud on the Department.

(ii) After conducting investigation, the Investigating Officer filed a Final Report before the JMFC, Panaji, praying for grant of 'A' Summary on the ground that there was no sufficient evidence to file charge sheet against the Petitioner.

(iii) Vide order dated 23.11.2012, the JMFC, Panaji, rejected the Final Report and the request for 'A' Summary, took cognizance of the offences under Sections 177, 182, 192, 204, 405, 409, 464, 468, 469, 471, 477(a), 120-B of IPC, and issued summons to the Petitioner.

(iv) Subsequently, by an order dated 18.03.2017, passed by the learned Chief Judicial Magistrate, Panaji, the Crime Branch was directed to file a charge sheet against the accused within a period of one month.

(v) Being aggrieved by this order, the State preferred a Revision before the Additional Sessions Judge, North Goa, Panaji, who, after hearing the arguments at length, by an order dated 13.07.2017, allowed the Revision Application and directed the Chief Judicial Magistrate to issue fresh summons to the accused and to proceed with the matter.

3. Head Mr S.D. Lotlikar, learned Senior Counsel along with Mr Sarvesh Sawant, learned Counsel for the Petitioner and Mr Pravin Faldessai, learned Additional Public Prosecutor for the Respondents.

4. Rule. Rule is made returnable forthwith with the consent of, and at the request of, the learned Counsel for the parties.

5. The Petitioner is aggrieved by both the orders dated 23.11.2012 and 13.07.2017. By virtue of the order dated 23.11.2012, the JMFC has passed an order refusing to accept the Final Report and the request for 'A' Summary by the Police and in the same breadth has also taken cognizance and issued summons. The order dated 13.07.2017, sets aside

the direction to the Chief Judicial Magistrate, Panaji, directing the Investigating Officer to file a charge sheet, contrary to the guidelines set out by the Hon'ble Supreme Court.

6. The issue before us is whether continuation of the proceedings against the Petitioner would amount to an abuse of law and whether the FIR, charge sheet, and its annexures, cumulatively taken, not adverting to the defence, if any, of the accused, would fall squarely within the exception carved out and the parameters set out in the landmark judgment of the Hon'ble Supreme Court in ***State of Haryana v/s. Bhajan Lal***¹.

7. The order of the learned JMFC dated 23.11.2012 takes note of the fact that the Investigating Officer had filed a Final Report concerning FIR No.81/2018, praying for grant of 'A' Summary on the ground that there is no sufficient evidence in the case to file charge sheet against the accused. The relevant part of the order is extracted below:

"14. In view of above stated reasons, the Final Report is not accepted and the request for 'A' Summary is rejected. Cognizance of the offences under Sections 177, 182, 192, 204, 405, 409, 464, 468, 469, 471 and 471-A of IPC is taken. Issue summons to the accused, Shri Prakash Keshav Gawas for the said offences returnable on or before the next date."

8. On one hand, the learned JMFC does not accept the Final Report and rejects the request for 'A' Summary and at the same time,

¹ 1992 SUPP (1) SCC 335

took cognizance of the offences and issues summons to the accused. The word “cognizance” has not been defined in the Code. However, various judgments of the Hon’ble Supreme Court have defined what is the process of ‘taking cognizance’. The law that is crystallised, in essence, is that cognizance implies application of judicial mind by the Magistrate. The cognizance of an offence is stated to be taken once the Magistrate applies his mind to the offence alleged and decides to initiate proceedings against the proposed accused. The Magistrate, before taking cognizance, needs to be satisfied about existence of a *prima facie* case on the basis of material collected, after conclusion of investigation, for coming to the conclusion that there is sufficient material to proceed with the accused. Taking of cognizance is a judicial function, and judicial orders cannot be passed in a mechanical, cryptic manner.

9. In the present facts, the Police had classified the case as ‘A’ Summary since no conclusive evidence is obtained against the accused.

The order is devoid of any reason as to why the learned JMFC disagreed with the request for ‘A’ Summary. It is also devoid of the reason as to what the learned Judge took cognizance of, if the Final Report did not spell out any offence against the accused.

In the absence of sufficient material to proceed with the case, the Magistrate ought not to have resorted to taking cognizance of the offence directly and issuing summons to the accused. The order is cryptic, suffers

from lack of application of judicial mind and is devoid of reasons. Hence, we have no hesitation in quashing and setting aside the order.

Since the order dated 23.11.2012 does not survive, FIR No.81/2008 dated 20.09.2008, registered with the Panaji Police Station, and all consequential proceedings are also quashed and set aside.

10. Rule is made absolute. The petition is allowed in the aforesaid terms, with no orders as to costs. Criminal Misc. Application No.300 of 2025(F) also stands disposed of.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.