



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO.6/2023

MANIKA PHALGAONKAR

... APPLICANT

Versus

SHREE FIBROCHEM AND 3 ORS.

... RESPONDENTS

Mr P. Vaze, Advocate for the Applicant (through VC).

Ms Mahadevi Utkar, Advocate for Respondents No.1 to 3.

Mr G. Nagvekar, APP for Respondent No.4-State.

CORAM:

VALMIKI MENEZES, J.

DATED:

7th APRIL 2025

P.C. :

1. Mr P. Vaze appears for the applicant, Ms Mahadevi Utkar appears for respondents no.1 to 3 and Mr G. Nagvekar, learned APP for respondent no.4. Ms Utkar submits that respondents no.1 to 3 have in fact been served at the address shown in the cause-title of the application. She submits that the respondents no.1 to 3 presently reside at the following addresses:-

1) SHREE FIBROCHEM, 1247, Shukrawar Peth, Subhas Nagar Lane No.5, Pune-411002.

2) Prashant Purohit, F2-204, Shivsagar Platinum, Suncity Road, Anandnagar, Pune-411051.

3) Sanjay Sudame, 323 Shaniwar Peth, Trimurti Hights, Pune-411030.

2. These addresses are furnished based upon the instructions given by respondent no.2 who is present in the court today.

3. Heard Mr P. Vaze for the applicant, Ms Mahadevi Utkar for respondents no.1 to 3 and Mr G. Nagvekar, learned APP for the State. This is an application which impugns Order dated 05.06.2023, whereby the JMFC 'D' Court at Panaji has dismissed, for non-appearance and non-taking of steps by the complainant under Section 138 of the NI Act, the Criminal Case which bears No.495/NIA/2018/D, which order has been passed exercising jurisdiction under Section 256 Code of Criminal Procedure (Cr.P.C.) and has acquitted respondents no.1 to 3.

4. The main reason cited in the impugned order for dismissing the complaint and acquittal of the respondents is that the complainant was absent on the date that the impugned order was passed and, on several occasions has prayed for time to take steps in the matter.

5. The application has been vehemently opposed by Ms Mahadevi Utkar, learned advocate appearing for respondents no.1 to 3. She submits that a perusal of the roznama of the case would reveal that right from the year 2018 till the case was actually dismissed, on several occasions the complainant has neither taken steps to serve the accused and/or has at least, on two occasions not remained present. She supports the impugned order and

submits that the Court was justified in dismissing the complaint for no action being taken by the complainant.

6. I have perused the copy of the roznama placed along with the application. It appears that after the Court took cognizance of the complaint on recording the verification of the complainant, the Court issued process against the applicant on 30.09.2018. Thereafter, it appears from the roznama that the concerned clerk was required to comply with the directions issued in the process on 15.10.2018. It is not known why the roznama entries on 17.12.2018 and 18.02.2019 required the complainant to take steps though it appears that the accused are sought to be served at the fresh address which was furnished on 26.08.2019. The summons were in fact issued at the new address on 21.10.2019 on which there was no report received of service even on 16.03.2020. At least the learned Magistrate has not recorded the reason why summons were not served. Between 16.03.2020 and 14.12.2020 the Court was not functioning due to the Covid'19 pandemic and fresh summons came to be issued on 01.02.2021 which was returned unclaimed on 17.11.2021 and the Court considered that the accused were duly served. Accordingly, the Court issued a non-bailable warrant against the accused which was sent to the concerned police station in Pune. The said warrant and the subsequent warrants issued thereafter were consistently returned back without service and the Court, strangely, kept directing the complainant to take fresh steps until 13.02.2023.

7. This approach of the Court itself is not countenanced by the procedure laid down in the Code of Criminal Procedure (Cr.P.C.) where the concerned Magistrate would issue a warrant with a duty to ensure that such warrant is enforced rather than call upon the complainant to apply for a fresh warrant. Be that as it may, the Court granted a final opportunity to the complainant on 06.05.2023 to take steps to execute a warrant, which was otherwise to be enforced by the Magistrate and not by the complainant and on 05.06.2023, which is the only date on which the complainant remained absent, the impugned order came to be passed.

8. The entire approach of the Magistrate appears to be outside the purview of the Cr.P.C. where the Magistrate is empowered and duty-bound to ensure service of warrants issued by it, having concluded that the summons have been served and the accused had not put in appearance. The Magistrate could not shift the burden on the complainant to ensure service of its warrants to enforce presence of the accused.

9. The impugned order is therefore passed neither considering the record before the Magistrate nor the provisions of the Cr.P.C. Consequently, the impugned order dated 05.06.2023 is hereby quashed and set aside. Since the advocate for the respondents no.1 to 3/accused in the matter has now undertaken, on instructions of respondent no.2 who is present in the Court, to appear before the concerned Magistrate on the next date of hearing the matter i.e. Criminal Case No.495/NIA/2018/D which is now restored to the file of the JMFC 'D' Court, Panaji,

shall appear before the Magistrate on 16.07.2025 at 10.00 a.m. The respondents no.1 to 3/accused, who are now aware of the process issued against them and the warrants which had been issued to enforce their presence shall appear on that date, unless exempted by an order of the Court. The Magistrate shall proceed with the hearing of the complaint in accordance with law. The complainant shall also appear before the Magistrate on the said date and time.

10. The application is allowed. The impugned order dated 05.06.2023 is quashed and set aside with the aforesaid directions. The Registry to issue Writ of this order to the concerned Magistrate.

VALMIKI MENEZES, J.