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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.73 OF 2025

Nibu Vincent
s/o P.V. Vincent
Vincent @Wilson, aged 45 years,
r/o Sea View Apartment, C Block,
Near Sanheevani Hospital, Baina,
Vasco Da Gama,
Native of H. No. 23A, Jaigirghat road,
Thakur Pukur,
Kolkata-63, W.B. ... Petitioner.

Versus

State of Goa
Represented by the P.I.
Crime Branch Police,
Station-Goa
Through Public Prosecutor ... Respondent.

Mr. Vivek Rodrigues with Mr. Laban Carvalho, Advocates for
the Petitioner.

Ms. S. Vaigankar h/f Mr. Pravin Faldessai, Additional Public
Prosecutor for Respondent the State.

CORAM: VALMIKI MENEZES, J.

DATED: 8th October, 2025

ORAL ORDER:

1. Registry to waive office objections and register the matter.

2. This petition impugns order dated 12.09.2025 passed by the Sessions Court at Margao in CRRA No.26/2025. By this order, the Sessions Court has set aside the order of the J.M.F.C. at Vasco da Gama to the limited extent that it has disposed of an application filed by the Investigating Officer under Section 52A of The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) without dealing with prayers (b) and (c) of the original application; the Revisional Court has however confirmed the finding of the Trial Court on the correctness of the inventory i.e. on prayer clause (a) of the application.

3. This petition arises on the following background facts:-

- a) The Police Inspector, Crime Branch, allegedly conducted a raid on 14.04.2025 at a Bus Stand in Chicolna, Mormugao Taluka, and during this raid, the said Officer is alleged to have recovered 4.325 kilograms of a substance from the Accused No.4. Apart from Accused No.4, who is the Petitioner herein, three other Accused were also arrested during the said raid.
- b) From the record, it appears that the Investigating Officer, in terms of Sub-Section 2 of Section 52A of the Act, filed an application on 30.04.2025 before the Judicial Magistrate First Class at Vasco da Gama in Form 5, which was marked as CRMA No.57/2025/A. In this application, the Investigating Officer has sought three reliefs. Prayer clause

- (a) sought a certificate from the Magistrate of the correctness of the inventory prepared by the Officer under Sub-Section 2 of Section 52A. Prayer clause (b) sought photographs to be taken of the contraband and a certificate from the Magistrate, certifying such photographs of the contraband taken in the presence of the Magistrate to be true; prayer clause (c) sought permission from the Magistrate to draw representative samples of the contraband/substance, in the presence of the Magistrate and a certificate, to certify the correctness of the list of the samples so drawn.
- c) The Magistrate, on considering the application passed an order on 05.05.2025, in which it has recorded, after considering the “search and seizure panchanama”, that the packets produced before him, allegedly containing the substance which were two in number, along with one silver colour pack, were different from the ones described in the seizure panchanama. Consequently, the learned Magistrate has refused to grant a certificate, certifying the correctness of the inventory prepared by the Investigating Officer as submitted under Form 5 under the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (the Rules). The effect of this order was that the Magistrate has refused to certify the correctness

of the inventory prepared by the I.O. under clause (a) of Sub-Section 2 of Section 52A of the Act, but, as a consequence of rejection of the application, has also refused prayer clauses (b) and (c) i.e. refusal to allow photographs to be taken of the contraband, and refused the I.O. the opportunity to draw representative samples from the packets produced before the Magistrate and a certificate to that effect.

- d) This order was challenged in a Criminal Revision Application by the State before the Sessions Court which passed the impugned order confirming the order of the Magistrate refusing to certify the correctness of the inventory prepared by the I.O. under clause (a) of Sub-Section 2 of Section 52A, but setting aside the order to the extent it refused to even to consider prayer clauses (b) and (c) of the application in Form 5; prayers (b) and (c) sought a certificate under clauses (b) and (c) of Sub-Section 2 of Section 52A. Consequent thereupon, the Sessions Court has remanded the application back to the Magistrate directing the Magistrate to take a decision on whether to grant a certificate under clauses (b) and (c) of Sub-Section 2 of Section 52A.

4. It is this order that is impugned in this petition primarily on the

following grounds:

- a) The first ground taken in the petition, as argued by Mr. Rodrigues for the Petitioner, was that a revision application itself was not maintainable against the order of the Magistrate, at the behest of the State before the Sessions Court, since the order passed by the Magistrate is not during the course of a criminal proceeding but was during the course of investigation.
- b) The second ground which has been urged by the Petitioner was that there was no cause for the Magistrate to go any further into considering the prayers (b) and (c) of the application under Form 5 filed by the I.O., since the Magistrate has already rendered his finding on the first prayer, rejecting the request to certify the correctness of the inventory prepared by the I.O.

5. The petition has been opposed by Mr. Pravin Faldessai, learned Additional Public Prosecutor for the State, primarily on two grounds:

- a) Firstly, that the Writ Petition was not maintainable against the impugned order since all that the order does was to direct a limited remand for the Magistrate to consider prayers (b) and (c) in terms of Sub-Section 2 of Section 52A of the Act.

- b) The second argument raised by the learned APP was that the State having not challenged the order, and accepting the finding of the Magistrate on clause (a) of Sub-Section 2 of Section 52A on the refusal to grant a certificate as to the correctness of the inventory conducted, there was no error in the order of the Sessions Court in directing the Magistrate to render findings on prayer clauses (b) and (c) of the application in Form 5.
- c) Reliance was placed on a Judgment of the Hon'ble Supreme Court in *Bharat Aambale v. The State of Chhattisgarh*; 2025 (8) SCC 452.

6. After considering the rival submissions of the learned Counsel for the parties, in my opinion, no error can be found with the findings given by the Sessions Court. The question as to whether a Criminal Revision Application was maintainable against the order of the Magistrate need not be decided, as this Court has ample powers under Article 227 of the Constitution of India under Section 528 of the BNSS, either in its supervisory jurisdiction or inherent jurisdiction, to correct any orders that have been passed by a Court subordinate to the High Court. All that this Court would examine is the correctness of the course taken by the magistrate, which could also be a decision rendered by this Court in the present petition.

7. Sub-Section 2 of Section 52A provides that the Officer of the

Police Station, in whose custody the seized contraband is placed, may prepare an inventory of such seized contraband, which contains the details relating to the description, quality, quantity, mode of packing, marks, numbers, or such other identifying particulars of the substance or a packing in which such substance was packed and the Country of origin. It further provides that such Officer may make an application to a Magistrate, after conducting this inventory, for the purposes of:

- a) Certifying the correctness of the inventory so prepared,
- b) Taking in the presence of such Magistrate photographs of such substance and to certify such photographs as true, and
- c) Allowing the Office to draw representative samples of such drugs or substances in the presence of the Magistrate who may then certify the correctness of any list of samples so drawn.

8. Sub-Section 3 postulates that an application made to the Magistrate shall be considered, and if a certificate is issued of any one of the three or all three of the certificates contemplated under clauses (a) to (c) of Sub-Section 2, such certificate issued by the Magistrate would be treated as primary evidence in respect of the offence. The option to apply for this certificate contemplated under Sub-Section 2 is of the Officer and such application is not mandatory, the Officer being free to investigate the matter further and decide whether the

charge-sheet should be filed in the absence of seeking such a certificate. Whether an application is made for such a certificate and such certificate is issued by the Magistrate, the effect of such certificate is set out in Sub-Section 4 where it would be treated as primary evidence in respect of the offence.

9. In the present case, the Officer applied for all three certificates under clauses (a), (b) and (c) of Sub-Section 2 of Section 52A. The application was made in terms of Rule 8 of Chapter III of the said Rules. The application which is to be made in Form 5 of Rule 9, contemplates that after the application is made to the Magistrate, if a relief is sought for drawing samples under clause (c) of Sub-Section 2 of Section 52A, the Investigating Officer shall ensure that the samples of the seized material are drawn in the presence of the Magistrate and the same are certified by the Magistrate.

10. It appears that when the packets containing the substance were produced before the Magistrate along with Form 5, the Magistrate referred to the seizure panchanama and came to a finding that the seizure panchanama records that the Accused was apprehended with a plastic bag containing:

- a) 14 green and white coloured wafer packets,
- b) 15 pink and white coloured wafer packets,
- c) 2 black coloured packets,

d) 1 silver coloured packet,

e) A blue and white coloured polythene bag.

11. The Magistrate then opined that under Rule 10, which prescribes the manner in which the Officer is supposed to draw samples to conduct the field test, the manner of maintaining the packets seized, was not followed and instead, the 10 individual packets were bunched up into one representative sample; the Magistrate further opined that what was produced before him were two black coloured packets and one silver coloured packet, which did not correspond to the original number of packets seized during the raid. The Magistrate further opined that each of the packets seized during the raid had not been weighed individually. Accordingly, the Magistrate has refused to certify the correctness of the inventory prepared by the I.O., which would in fact be a refusal to certify the correctness of the inventory prepared by the Officer under clause (a) of Sub-Section 2 of Section 52A.

12. However, whilst refusing to certify the correctness of the inventory under clause (a), the Magistrate has also rejected prayers (b) and (c) of the application in Form 5.

13. Clause (b) states that if a request is made to the Magistrate, the Magistrate may allow photographs of the substance to be taken in his presence and he may certify such photographs to be true. All that

clause (b) empowers the Magistrate to do is to have photographs taken of the substance/packets, in his presence, which he would certify to be true.

Under clause (c), representative samples which the Officer requires to be drawn from the sealed packet, would also have to be taken/drawn in the presence of the Magistrate, which would obviously have to be weighed, separate packets prepared and sealed, for being forwarded to the concerned forensic laboratories for analysis. Clause (c), in other words, provides for drawing of sample in the presence of a Magistrate, weighing the representative sample, photographing this process and a certificate to be issued by the Magistrate of compliance with the procedure of drawing samples in his presence. Both the procedures prescribed under clauses (b) and (c), therefore, provide a safety and protection to the rights of the Accused, to ensure that the samples which are drawn from the packets, are done in the presence of the Magistrate who would certify the procedure. Refusal to certify the correctness of the inventory cannot have any effect or bearing on request under clauses (b) and (c).

14. In my opinion, therefore, the Magistrate, having decided to refuse certifying the correctness of the inventory prepared by the Officer, would necessarily have to consider whether photographs of the substance be taken in his presence and a certificate to that effect be issued, and whether he ought to allow the Officer to take

representative samples of the substance from the packets produced before him and to certify the correctness of the list of samples so drawn. To that effect, the Magistrate has obviously failed to address the prayers of the Investigating Officer for exercising clauses (b) and (c) of Sub-Section 2 of Section 52A. There is, therefore, an error committed by the Magistrate and a failure on his part to exercise the powers vested in him to complete the procedures under clauses (b) and (c) of these provisions.

15. Without going into whether Criminal Revision Application was maintainable, the observations made by the Sessions Court, which are endorsed in this order are, therefore, correct.

After having considered the order of the Magistrate dated 05.05.2025, I am of the opinion that no fault can be found with the order of the Magistrate refusing to certify the correctness of the inventory prepared by the Investigating Officer; however, the learned Magistrate shall now consider clauses (b) and (c) of the application at Form 5 filed by the Officer, and shall proceed to allow photographs to be taken of the packets produced before him and certify such photographs, to be true, and shall also proceed to allow the Officer who has produced the packets before the Magistrate, to draw representative samples from the packets produced, in the presence of the Magistrate, which samples shall be weighed, placed in separate packets, sealed after weighing the same, in terms of the procedure

prescribed in clause (c) of Sub-Section 2 of Section 52A. Obviously, the procedure under clause (c) would be photographed and the Magistrate would then certify the correctness of a list of samples drawn in his presence after complying with the specific procedure stated in clause (c).

16. The Criminal Writ Petition, therefore, has no substance, and is accordingly dismissed. The J.M.F.C., Vasco da Gama, shall proceed to pass orders on prayer clauses (b) and (c) of the application i.e. CRMA No.57/2025/A in the light of the observations made herein. In terms of clauses (b) and (c) of Sub-Section 2 of Section 52A of the NDPS Act. The I.O to appear before the Magistrate for completing the procedure for prayer clauses (b) and (c) of the application, on 16.10.2025 at 2.30 pm and thereafter on any other date convenient to the Magistrate.

17. The petition stands disposed of in the above terms.

VALMIKI MENEZES, J