

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: September 15, 2010
Judgment delivered on: September 21, 2010

+ **CRIMINAL REV. P. NO.379/2010 & CRL.M.(B) NO.1024/2010**

MOHD. SHAFI **....PETITIONER**

Through: Mr. Vimal Puggal, Advocate with
Mr. Rakesh Gupta, Advocate

Versus

THE STATE **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

WITH

CRIMINAL REV. P. NO.386/2010 & CRL.M.(B). NO.1030/2010

VIJAYA SINGH **....PETITIONER**

Through: Mr. S.A. Sattar, Advocate with
Mr. Brijesh Singh, Advocate

Versus

STATE **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

AND

CRIMINAL REV. P. NO.393/2010 & CRL. M(B) NO.1057/2010

MOHD. ANZAR @ CHHOTTEY **....PETITIONER**

Through: Mr. Vimal Puggal, Advocate with
Mr. Rakesh Gupta, Advocate

Versus

THE STATE **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Vijaya Singh, Mohd. Anzar and Mohd. Shaffi have filed these revision petitions, being aggrieved by the impugned judgment of learned Additional Sessions Judge dated 13.07.2010 dismissing their appeals against their conviction and sentence by the learned Magistrate for the offences punishable under Sections 325, 341 and 354 IPC read with Section 34 IPC

2. The facts giving rise to the revision petitions are that on 12.01.1998, on the receipt of information vide DD No. 25 at Police Post Mayur Vihar, Phase-I that injured Susan Jyoti has been admitted in JPN Hospital by her husband, Head Constable Jawahar Lal reached the hospital and obtained her MLC No. 2492/98. The doctor declared Susan Jyoti unfit for statement, as such her statement could not be recorded on that day. On the next day, Susan Jyoti was discharged from the hospital. Head Constable Jawahar Lal made efforts to contact her and finally, he succeeded in meeting the complainant Susan Jyoti on 19.01.1998 and recorded her statement, which led to the registration of the case FIR No. 38/1998 under Sections 341/323/354/34 IPC at police station Trilok Puri.

3. Susan Jyoti, in her complaint stated that on 12.01.1998 at about 02.30 pm, after the completion of her duty, she boarded bus No. DL-1P-3947, route No. 118, for her home. When the bus reached near

Ganesh Nagar Bus Stop, four boys aged between 20-22 years started teasing her and one of them touched her breast. She objected to the said indecent act and asked the bus driver and conductor to stop the bus, who paid no heed to her repeated requests. At about 03.30 pm, when the bus stopped at Shashi Garden Bus Stop, one of those four boys alighted from the front gate of the bus and boarded from the rear gate of the bus and whispered something in the ear of the conductor. Thereafter, he again came near the front gate. When the bus reached at I.T.I., Khichripur, aforesaid boy Vijaya Singh (revisionist) hit her right eye with a stone. Despite this, neither the conductor nor the driver stopped the bus. When the passengers of the bus strongly protested, the bus driver stopped the bus near Kotla graveyard and all the four boys managed to flee away. The bus was then taken to police station Trilok Puri and the complainant from there, was rushed to Kukreja Nursing Home, Acharya Niketan for medical aid. From there, husband of the complainant took her to JPN Hospital and got her admitted there.

4. After the registration of FIR, investigation was carried out. The Investigating Officer got prepared the rough site plan, recorded statements of the witnesses and arrested the revisionist Vijaya Singh, Mohd. Anzar @ Chhotey Lal (conductor) and Mohd. Shaffi. On conclusion of investigation, all three of them were challaned and sent for trial.

5. The revisionists were charged by the learned Metropolitan Magistrate for the offences punishable under Sections 341/325/354 read with Section 34 IPC.

6. Prosecution examined 10 witnesses to bring home the guilt of the accused persons, only witness to the incident being the complainant Susan Jyoti (PW1).

7. The revisionist petitioners, when examined under Section 313 Cr.P.C. denied the prosecution case in its entirety and pleaded innocence. They however, did not choose to lead evidence in their defence.

8. The learned Metropolitan Magistrate, on appreciation of evidence and after hearing the counsels for the parties, convicted the petitioners on charges punishable under Section 341, 323 and 354 IPC read with Section 34 IPC and vide the order on sentence dated 12.03.2010, awarded the sentence to the petitioners.

9. Feeling aggrieved, the petitioners preferred appeals against the impugned judgment of conviction and the order on sentence passed by the learned Metropolitan Magistrate. The learned Additional Sessions Judge, after hearing the counsels on behalf of the appellants (revision petitioners), affirmed the impugned judgment of conviction and the order on sentence.

10. Feeling aggrieved by the aforesaid concurrent finding of facts resulting in conviction of the petitioners and the sentence awarded to them, the petitioners have preferred the above revision petitions.

11. Learned Sh. Vimal Puggal, Advocate appearing for the petitioners Mohd. Shaffi and Mohd. Anzar has challenged the impugned judgment dismissing the appeal mainly on the point of law. He has taken me through the statement of the complainant Susan Jyoti, which was recorded a week after the incident and which is the basis of registration of the case and submitted that as per the complaint statement, the revision petitioners were the conductor and the driver of the bus. They did not participate in teasing or molestation of the prosecutrix Susan Jyoti, nor is it alleged in the complaint statement that anyone of them participated in causing injury to the prosecutrix. He has pointed out that as per Susan Jyoti, she was hit with a stone on her right eye by the accused Vijaya Singh. Learned counsel has submitted that on the basis of aforesaid facts, it cannot be said that the petitioners Mohd. Anzar and Mohd. Shaffi had anything to do with outraging modesty of the complainant Susan Jyoti or causing any injury to her, particularly when there is no evidence to suggest that there was sharing of common intention between the petitioners Mohd. Shaffi and Mohd. Anzar with the aforesaid four boys, who indulged in eve-teasing. He has argued that at best, it can be said that since the petitioners Mohd. Anzar and Mohd. Shaffi did not stop the bus on the request of the prosecutrix, they had caused wrongful restraint to her. Thus, he

has submitted that the conviction of Mohd. Anzar and Mohd. Shaffi for the offences punishable under Section 323 and 354 IPC is bad in law as there is no evidence to substantiate said charges against the petitioners Mohd. Anzar and Mohd. Shaffi.

12. Learned counsel for the petitioner Vijaya Singh has tried to assail the impugned judgment resulting in his conviction on merits by raising the issue that the testimony of sole witness of incident PW1 Susan Jyoti is not reliable firstly, because of the delay in recording of FIR, secondly, that despite of the fact that the incident took place in a running bus full of passengers, there is no independent witness to corroborate her version. Thirdly, because of the reason that the as per the DD report, Susan Jyoti was admitted in JPN Hospital by her husband but he has not been produced as a witness which has caused prejudice to the defence, fourthly, for the reason that no record pertaining to MLC of Susan Jyoti prepared by Kukreja Nursing Home has been produced in evidence to support her version and fifthly, the identification of the accused Vijaya Singh by the witness in the court does not inspire confidence as no TIP was conducted to fix the identity of the revisionist Vijaya Singh.

13. Learned APP, on the other hand, has argued in favour of the impugned judgment. He has submitted that the court of learned Metropolitan Magistrate as well as the appellate court i.e the Additional Sessions Judge, has returned a concurrent finding of fact. Therefore, in

the revisional jurisdiction, this court is not expected to reappraise the evidence as if it is sitting in appeal.

14. I have considered the rival contentions. The first question which crops up for determination is as to what is the scope of revisional jurisdiction of the High Court in a petition filed against the order of dismissal of appeal against conviction and sentence by the learned Additional Sessions Judge. In the matter of **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri**, (1999) 2 SCC 452 the Supreme Court has examined this question and observed thus:

“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappraising the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”

15. From the above enunciated proposition of law, it is clear that the High Court in its revisional jurisdiction, can call for and examine the

record of proceedings, only for the purpose of satisfying itself as to the correctness, legality or propriety on any finding, sentence or order. The jurisdiction, however, is supervisory in nature for correcting miscarriage of justice but the revisional power of the High Court cannot be equated with the power of appellate Court nor it can be treated as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion, when there is concurrent finding of facts, unless any glaring feature is brought to the notice of the High Court, which would otherwise tantamount to gross miscarriage of justice.

16. Applying the aforesaid proposition of law to the facts of this case, I am of the view that so far as the revision petition filed by Vijaya Singh is concerned, his counsel has only raised question of facts and he has tried to dig holes in the prosecution evidence which has been appreciated by the learned Metropolitan Magistrate, while returning finding of conviction and the same was re-appreciated by the learned Additional Sessions Judge. Therefore, I decline to interfere with the concurrent finding of facts returned by the learned Metropolitan Magistrate and the learned Additional Sessions Judge so far as the conviction and sentence of the appellant Vijaya Singh is concerned. His revision petition is accordingly dismissed.

17. As regards the revision petitions filed on behalf of the petitioners Mohd. Anzar and Mohd. Shaffi, they have raised pure questions of law.

On going through the complaint of the prosecutrix, which is the basis of the FIR, it is apparent that role ascribed to the said petitioners, who are conductor and driver of the bus, is that despite of request made by the prosecutrix, they did not stop the bus. From the aforesaid conduct of the conductor and the driver, only inference which can be drawn under law is that they caused wrongful restraint to the prosecutrix by not stopping the bus at her request. However, as regards the offence of causing injury and outraging modesty of Susan Jyoti under Section 323 and Section 354 IPC, no role has been ascribed to the conductor and driver and there is nothing on record to suggest that they shared common intention with the petitioner Vijaya Singh of outraging modesty of the prosecutrix or to cause injury to her. No doubt, prosecutrix Susan Jyoti in the trial has deposed that she was molested and when she requested the conductor Mohd. Anzar and bus driver Mohd. Shaffi to stop the bus, Mohd. Anzar said "*ek bar chhathi pe hath lagane se kya hota hai*" but this version of the prosecutrix is an improvement upon her earlier statement, which formed basis of the registration of the case, where it is not so mentioned, therefore, this version is not reliable. Thus, under the circumstances, I am of the view that the learned Additional Sessions Judge has committed an error in law in holding that the revision petitioners Mohd. Anzar and Mohd. Shaffi shared common intention with the petitioner Vijaya Singh and other boys, who outraged the modesty of the prosecutrix Susan Jyoti or

caused injury to her. Thus, their conviction under Section 323 IPC and Section 354 with the aid of Section 34 IPC cannot be sustained.

18. In view of the discussion above, the Criminal Revision Petition No.386/2010 of Vijaya Singh is dismissed. Criminal Revision Petitions filed by Mohd. Anzar and Mohd. Shafi are partly accepted and while maintaining their conviction and fine imposed under Section 341 IPC, their conviction and sentence under Section 323 and 354 IPC is set aside.

19. It is informed that the revisionists Mohd. Anzar and Mohd. Shafi are in jail. They were sentenced to pay fine of ₹ 500/- each for the offence under Section 341 IPC, which fine has already been deposited. Therefore, they be released forthwith, if not required in any other case.

20. Criminal Revision Petitions and the pending applications are disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 21, 2010

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