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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

63 CRIMINAL REVISION APPLICATION NO. 208 OF 2006

SUBHASH KARBHARI NIKAM
RAMCHANDRA KARBHARI NIKAM
VERSUS
THE STATE OF MAHARASHTRA

.....

Mr S. S. Panale, Advocate for Applicants
Mr M. A. Aher, APP for Respondent/State

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 24th AUGUST, 2026

P. C. :

1. Heard learned Advocate Mr Panale for the applicants and learned APP Mr Aher for respondent/State.

2. These revision applicants are challenging the impugned judgment and order dated 28/06/2006, passed by the learned I st Ad-hoc Additional Sessions Judge, Aurangabad in Criminal Appeal No.186/2004. Vide the said impugned judgment, the learned Sessions Court partly allowed the appeal and modified the sentence, thereby sentencing appellant No.1/Subhash Karbhari Nikam to suffer simple imprisonment for one month and to pay fine of Rs.500/-, in default to pay fine, to suffer simple imprisonment for 15 days. Learned Sessions

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Judge further sentenced appellant No.2/Ramchandra karbhari Nikam to suffer simple imprisonment for 15 days and to pay fine of Rs.250/-, in default to pay fine, to suffer simple imprisonment for 07 days. Learned Sessions Court, vide the aforesaid order, partly allowed the criminal appeal and set aside the impugned order dated 03/11/2004, passed by the learned Judicial Magistrate First Class, Vaijapur, Dist. Aurangabad in RCC No.52/1996, wherein the appellant and other accused persons were prosecuted for offences punishable under Sections 323, 324, 504, 506 read with section 34 of the Indian Penal Code.

3. The aforesaid prosecution was on the basis of report dated 07/07/1996 bearing Crime No.51/1996, lodged by the informant PW-1/Navnath Nikam with Shivoor Police Station. After the investigation is complete, the accused persons came to be tried before the learned Judicial Magistrate First Class, Vaijapur. The prosecution examined four witnesses as PW-1/Navnath Nikam, complainant; PW-2/ Dadekhan Pathan, panch witness; PW-3/Anusayabai Nikam, eye witness and PW-4/Haribhau Nikam, injured witness. After recording the evidence of the these witnesses, learned Judicial Magistrate First Class convicted the appellants for the offence punishable under Section 324, 323, 504, 506 read with section 34 of the Indian Penal

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Code and sentenced appellant No.1/Subhash to suffer simple imprisonment for two months and to pay fine of Rs.500/-, in default, to pay fine, to suffer further imprisonment of 15 days and also sentenced to appellant No.2/Ramchandra and one other accused, namely Devchand Karbhari Nikam to suffer simple imprisonment for one month and to pay fine of Rs.250/-, in default of payment of fine, to suffer further imprisonment for seven days. It is pointed out that accused/Devchand Karbhari Nikam has expired during the pendency before the learned Sessions Court and therefore, appeal against him came to be abated.

4. Learned Sessions Court, after hearing the learned Advocates for the parties, partly allowed the appeal thereby sentencing the accused persons as aforesaid. Being aggrieved by the said order of learned Sessions Court, the appellants have approached this Court by filing this revision application.

5. Mr Panale, learned Advocate for the applicants submits that the learned Subordinate Courts have arrived at a conclusion only on the basis of presumptions, conjectures and surmises and they have not appreciated the evidence in a proper perspective. According to him, the Subordinate Courts have not appreciated the fact that there

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was long standing dispute between the family of present applicants/accused persons, complainant and prosecution witnesses, relating to boundaries of their fields. He further submits that perusal of the deposition of the witnesses reveals that the appellants cannot be convicted for the charges levelled against them.

6. He further submits that the Subordinate Courts have failed to appreciate that, in order to prove offences against the applicants, the prosecution has not examined Medical Officer to prove medical certificate. He, therefore, submits that the impugned judgment and orders of both the Subordinate Courts suffer from gross illegality and therefore, they are liable to be quashed and set aside.

7. Per contra, learned APP Mr Aher for the respondent/State supports the judgment of learned Sessions Court. He submits that the testimonies of PW-1 and PW-4 show that the applicants/accused have committed aforesaid offence. He further submits that, since PW-1 and PW-4 are eye witnesses, there being direct evidence and there is no need to rely upon medical certificate to prove the medical injuries separately by examining the Medical Officer. He further submits that the ocular evidence of the eye-witnesses inspires confidence so as to hold the accused persons responsible for injuries caused to victim.

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According to him, the impugned orders passed by the learned Subordinate Courts are correct and proper and require no interference of this Court. He further submits that, even in absence of recording evidence of Medical Officer, no prejudice caused to the accused persons. He then submits that the evidence is sufficiently brought on record by the prosecution. Therefore, he prays for dismissal of the present revision application.

8. After hearing the learned Advocates for the respective parties and going through the record available with the Court, it is clear that the applicants were being prosecuted for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code on the basis of a report lodged by PW-1 Navnath. There appears to be a long standing dispute between appellants and complainant pertaining to boundaries between their fields. The alleged incident of assaulting appears to have caused due to quarrel took place between the parties and in that quarrel, injuries alleged to have been caused to the victim.

9. After going through the evidence, it appears that the prosecution has sufficiently established the guilt of the accused before the Subordinate Courts. The judgment delivered by the learned

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Subordinate Courts cannot be said to be perverse, as it has applied correct proposition of law. After considering the evidence on record, learned Sessions Court, while deciding the appeal, has rightly observed that the prosecution has proved the guilt of the accused persons, and therefore, the Sessions Courts have committed no error while passing the impugned judgment and orders. In that view of the matter, the impugned judgment and orders of the learned Subordinate Courts are required to be maintained, as there is not illegality in the same. However, on the point of sentence, there is no propriety in sending the accused persons to jail after a period of almost 30 years. Instead, the accused can be granted benefits of protection under provisions of the Probation of Offenders Act.

10. Having regard to the limited scope of revisional jurisdiction, this Court would not ordinarily interfere with findings of fact unless the findings are shown to be perverse, manifestly erroneous, illegal or resulting in miscarriage of justice. On independent consideration of the evidence of PW-1 and PW-4, I find that the findings recorded by the Courts below are based on evidence available on record and cannot be said to be perverse or manifestly illegal. As no illegality and perversity is found in the impugned

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judgments, I am of the opinion that there is no merit in the instant Criminal Revision Application.

11. However, the incident is of the year 1996. The applicants are presently aged near about 70 years and, as stated, have no previous criminal antecedents. The offence, though proved, arose out of a solitary incident and the applicants have already faced the ordeal of criminal proceedings for a considerable period. Having regard to the nature of the offences, the age and antecedents of the applicants and the long passage of time, I am of the view that it would be appropriate to extend the benefit of Section 4 of the Probation of Offenders Act. Hence, I pass the following order:-

ORDER

(a) Criminal Revision Application is partly allowed.

(b) The conviction of the applicants for the offences punishable under Sections 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code is maintained. However, the substantive sentence imposed upon the applicants is modified and, instead of sentencing them at once to any punishment, they are directed to be released on probation of good conduct under the Probation of Offenders Act, 1958.

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(c) The applicants shall enter into a bond with one surety each for one year to receive the sentence when called upon during the above period and in the meantime, maintain peace and good behaviour.

(d) Record and proceedings be returned to the Trial Court.

[SUSHIL M. GHODESWAR, J.]

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