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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 CRIMINAL REVISION APPLICATION NO. 188 OF 2022

NITIN SAMBHAJIRAO SARWADE
VERSUS
THE STATE OF MAHARASHTRA

Mr.A.D.Khot, Advocate for the Applicant.
Mr.A.A.A.Khan, APP for the Respondent/State.

(CORAM : SUSHIL M. GHODESWAR, J.)

DATE : 30th SEPTEMBER, 2026

PER COURT :

1. The Applicant is challenging the judgment passed by the learned Additional Sessions Judge dated 18.06.2022 in Criminal Appeal No.33/2015, wherein the learned Sessions Court partly allowed the appeal, thereby acquitting him u/s 332 and 506 of the IPC, however, maintained his conviction u/s 353 of the IPC. In the said Criminal Appeal, the Applicant has challenged the conviction order dated 08.04.2015 passed by the learned J.M.F.C. Kaij, Dist.Beed in RCC No.13/2012, wherein he was previously convicted u/s 353 of the IPC and ordered to suffer SI for two months and to pay fine of Rs.1000/- i.d. to suffer SI for 15 days, further convicted u/s 332 and sentenced to

suffer SI for three months and to pay fine of Rs.1,000/- I.D. to suffer SI for 15 days, and also convicted u/s 506 of the IPC and sentenced to suffer SI for two months.

2. Heard the learned Advocate for the Applicant. He submits that the judgment passed by the learned Trial Court as well as the learned Appellate Court are not sustainable in the eyes of Law as the prosecution is totally failed to establish the guilt of the Applicant/Accused as regards commission of offence u/s 353 of the IPC is concerned. According to him, the role attributed to the Applicant is that on the date of incident i.e. on 02.09.2011, when the Police Staff found that certain persons were playing gambling and accordingly the said persons ran away by seeing the Police Officials. At that time, the accused came there in Indica Car No.MH-44/103 and asked the Police team as to how they came there and who gave them right to conduct the raid there. The Applicant has also allegedly behaved arrogantly with the informant and police officials. The Applicant/Accused also alleged to have ran away on the person of the informant and pushed him down. The learned Advocate for the Applicant submits that the prosecution has examined total 9 witnesses and most of them were

police witnesses. No independent witness has been examined to prove the offence u/s 353 of the IPC. He further submits that even assuming but not admitting that the conduct of the Applicant pushing the informant, however, the same is not sufficient to establish the crime u/s 353 of the IPC.

3. Learned Advocate for Applicant is relying upon the judgment in the case of **Mahendra Kumar Sonker Vs The State of Madhya Pradesh [(2024) 8 SCR 935]**. The Hon'ble Apex Court in the said judgment observed that in order to attract Section 353 of the IPC, the use of criminal force or assault is necessary so as to deter the public servant from performing his official duty. The Hon'ble Apex Court further observed that there should be evidence to prove the assault or use of criminal force on the police personnel for the purpose of preventing or deterring him from discharging his duty. He, therefore, submits that the Trial Court and the Appellate Court have committed grave error in Law. Therefore, the instant revision Application needs to be allowed.

4. Per contra, the learned APP strongly opposed the revision

application. He submits that by going through the testimonies of the prosecution witnesses, it is quite evident that the Applicant is very much involved in the commission of offence u/s 353 of the IPC. The learned Trial Court as well as the Appellate Court has passed the impugned order by appreciating the evidence in proper perspective. The judgment passed by the Sub Ordinate Courts does not show any perversity, illegality or irregularity. As such, the same are required to be maintained. He further submits that the scope of this Court u/s 397 of the Cr.P.C., is too limited and it is only to prevent the miscarriage of justice. He, therefore, prayed for rejection of the instant criminal revision application.

5. After hearing the learned Advocates for the parties and on going through the record placed before this Court, it is found that the Applicant/Accused had tried to intervene, came on the spot where the complainant Police Personnel and his police team were carrying out raid in order to nab certain accused persons, who were allegedly involved in gambling activities. When police reached on the spot, those involved in gambling ran away. However, the applicant/accused came to the spot and he asked the police personnel as to how they came there

and who gave them right to conduct the raid. It is also further allegation that he had pushed the complainant and ran away from the spot.

6. Apart from the aforesaid involvement of the applicant, there is no other incriminating material against the Applicant which goes to suggest that the applicant had actually used any criminal force against the complainant and the other public servants so as to deter or prevent them from performing their official duties. In order to establish the aforesaid charge, it is for the prosecution to prove it's case beyond reasonable doubt. The presence of the Applicant on the spot is not disputed however at the same time, the prosecution was required to establish that the police personnel had been on the spot to conduct raid and they were on official duty at the relevant time. Even otherwise, the conduct of the Applicant does not show that he has ever used force or tried to deter the public servants i.e. 6 to 7 police personnel from performing their duties.

7. The reliance placed by the learned Advocate for the Applicant on the judgment delivered by the Hon'ble Apex Court in

Mahendra Kumar Sonker (supra) is squarely applicable to the present case. In the said case, their Lordships, while passing the judgment in respect of identical situation, has observed that the jostling and pushing to the Police Officials appears to have happened in process of extricating the accused therein from arrest and it does not attract the offence u/s 353 of the IPC. In paragraph Nos. 28 and 29 of the said judgment, it is observed that :-

“28. Having considered the oral evidence and the medical evidence, we are constrained to conclude that the prosecution has not established that the appellant has assaulted or used criminal force against the trap party. In fact, what transpires is that when the appellant was apprehended there appears to have been an attempt by the appellant to wriggle out and jostling and pushing appears to have happened, in the process of the appellant trying to extricate himself from the arrest. None of the ingredients of assault or criminal force have been attracted.

29. Further, there is absolutely no evidence to show that the accused used any hard and blunt object. PW-3 Dr. H. L. Bhuria had deposed that the injuries on PW-9 Niranjana Singh, PW-8 N. K. Parihar, Constable Raj Kumar and Constable Shivshankar might have been caused by hard and blunt object. In view of the above, there is no evidence to indicate that the accused assaulted or used criminal force on the trap party in execution of their duties or for the purpose of preventing or deterring them in discharging their duties. In short, none of the ingredients of Section 353 are attracted. The jostling and pushing by the accused

with an attempt to wriggle out, as is clear from the evidence, was not with any intention to assault or use criminal force.”

8. In view of the aforesaid observations, it is crystal clear that alleged conduct of the Applicant, is not at all said to have attracted ingredients of the offence u/s 353 of the IPC. In that view of the matter, the learned Trial Court and the learned Appellate Court have committed grave error in not considering the aforesaid aspect which goes to the root of the matter and hence both the judgments passed by the Lower Courts being incorrect and improper are required to be quashed and set aside. Accordingly, following order is passed :-

[a] The Criminal Revision Application is allowed . The order dated 18.06.2022 passed by the learned Additional Sessions Judge, Ambajogai in Criminal Appeal No.33/2015 and order dated 08.04.2015 by the learned J.M.F.C. Kaij, Dist. Beed in RCC No.13/2012, convicting the Applicant for the offence punishable u/s 353 of the IPC, is hereby quashed and set aside. Applicant is acquitted in Crime No.267/2011, of the offence u/s 353 of the IPC, registered at Police Station, Kaij, Dist.Beed.

[b] His bail bond stands cancelled and the surety, if any, stands discharged.

[c] The fine amount, if deposited, be refunded to the Applicant.

(SUSHIL M. GHODESWAR, J.)