

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 70 OF 2003

1.Smt. Neelam Mahendra Arya,
Aged 45 years, Occ: Business.

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2. Shri Mahindra Arya,
Aged 48 years, Occ: Business,
Both Nos. 1 & 2 residing at B/502,
Kukreja Estate, Sector 11, CBD Belapur,
Navi Mumbai- 400 604.

... Applicants

Versus

1.The State of Maharashtra.

2. Smt Sunita Yashodhan Mandrekar,
Adult, residing at C/5, A-2, 3, Sarvodaya Society,
Khanda Colony, Sector-8, New Panvel,
Dist -Raigad.

...Respondents

Mr. Advait Tamhankar (through VC) for the Applicants, appointed
through Legal Aid.

Ms. Sharmila Kaushik, APP for the State/Respondent No.1.

Mr. Kunjan Makwana i/b Mr. Ganesh Gole for the Respondent No.2.

CORAM : M.M. SATHAYE, J.

DATE : 17th SEPTEMBER, 2026

JUDGMENT :

1. By this Criminal Revision Application, Accused Nos.2 and 3 are challenging the Judgment and Order dated 20.12.2002 passed by the IInd Ad-hoc Additional Sessions Judge, Raigad, at Alibag in Criminal appeal No. 17 of 2001 by which their appeal is partly allowed, maintaining the conviction but modifying the sentence. Offence involved is under Section 500 read with 34 of the Indian Penal Code,1860 ('IPC' for short).

BACKGROUND

2. The Respondent No.2 is the Complainant, who filed complaint contending *inter alia* as under.

2.1 That Accused No. 1 - Smt. Kamalesh Gandhi is divorced wife of one Mr. Shammi Gandhi and there was dispute between the couple. That Accused Nos. 2 and 3 (Aryas) are husband and wife and they have close relations with the family of Accused No. 1 (Gandhis).

2.2. That Accused No. 1 to 3 in collusion published defamatory news against the Complainant on 16.05.1998 in local newspaper by name '*Dhavate Navnagar*' for lowering the reputation of the Complainant. That Accused Nos. 1 to 3 supplied the information of defamatory news to Accused No. 4- editor of the said newspaper, which was printed by Accused No. 5- Printer.

2.3. That without ascertaining the truth, the news published was about alleged illicit relation of the Complainant with husband of Accused No. 1 i.e. Mr. Shammi Gandhi and that reputation of the Complainant was lost. That she suffered from mental and physical agony. That her husband took divorce from the Complainant and her family got ruined.

2.4. That the Complainant had visited the Kalamboli Police Station many times and made oral complaints but no cognizance was taken and therefore she gave complaint in writing to the Police Commissioner on 15.03.1999.

3. Defence of the Revision Applicants is that it was only Accused No. 1 who furnished information for publishing news and it was not done by Revision Applicants. That there was no ill-motive. That they are in no way connected to publication of news.

4. The Complainant examined herself as PW-1, Police constable Mr. Ashok Pawar as PW-2 who produced NC register and Mr. Satyavan Jadhav, who had accompanied her to office of news paper as PW-3. The Accused No.4- Editor of the daily newspaper examined himself for Accused nos. 4 & 5. Revision Applicants did not examine themselves.

5. The Judicial Magistrate First Class, Panvel who heard and tried the case (Summary Criminal Case No. 660 of 1999), convicted the Accused Nos. 2 to 5, including (present Revision Applicants) for the offence punishable under Section 500 read with 34 of the IPC and sentenced them to suffer simple imprisonment ('SI' for short) for 15 days and to pay fine of Rs. 2,000/- each and in default to suffer SI for 5 days. Out of the fine amount, amount of Rs. 1,000/- from each accused, was directed to paid to the Complainant as compensation.

6. The Revision Applicants (Accused Nos. 2 and 3) filed Criminal Appeal No. 17 of 2001. Accused Nos. 4 and 5 (Editor and Printer) filed Criminal Appeal No. 18 of 2001.

7. Both these appeals were heard together by learned IInd Ad-hoc Addl. Sessions Judge, Raigad, and by the impugned Judgment and Order, the appeals were partly allowed. Conviction is maintained, but the substantive sentence of simple imprisonment of 15 days, is set aside. Accused Nos. 2 to 5 were directed to pay fine of Rs. 5,000/- each and in default to suffer SI of 5 months. Out of the fine amount, Rs.2,500/- from each of the accused, was directed to be paid to the Complainant as compensation.

8. This revision application was admitted on 10.03.2003. Since nobody was attending the matter, on 07.11.2025, High Court Legal Aid

Authority was directed to appoint an advocate for the Applicants to espouse their cause.

SUBMISSIONS

9. Learned counsel for the Applicants submitted as under:

9.1. That the case is based entirely on circumstantial evidence, which does not prove the guilt beyond reasonable doubt.

9.2. That there is delay of 10 months in lodging the complaint, which is not explained. That the alleged offence is non-cognizable and therefore the explanation that 'police were not taking cognizance' cannot be considered.

9.3. That Accused No. 4 (Editor) has clearly stated in his evidence that information was given by Accused No. 1 and therefore present Revision Applicants have no role to play. That the Revision Applicants had no motive.

10. On the other hand, learned counsel for the Respondent No. 2, (Original Complainant) submitted as under.

10.1 That the letter allegedly given by the Accused No.1 (information about news), is not produced on record. That the Complainant was working as Estate Agent and there was business rivalry between her and the Revision Applicants.

10.2. That the Revision Applicants have not entered the witness box and only Accused No. 4 has entered the witness box.

10.3. That there is no explanation for printing the defamatory article in banner line with 60 font size, clearly showing motive.

10.4. That the delay is correctly considered by the Courts below and no interference is required.

10.5. That there was no effort made by Accused No. 4 to correct the alleged mistake in the affidavit filed in the civil suit stating names of Revision Applicants providing information for the news.

REASONS AND CONCLUSION

11. I have considered the rival submissions and perused the impugned order and oral evidence of Accused No. 4 as shown by the learned counsel for both sides.

12. It appears that the news article referred the Complainant as concubine / keep of one Mr. Shammi Gandhi, who is the husband of the Accused No.1. There is a reference in the news about incident of catching the Complainant and Mr. Shammi Gandhi red-handed in naked/compromising position in the residential flat of Mr. Shammi Gandhi. Therefore, the Courts below have rightly held that *ex-facie* the news was defamatory.

13. The argument about delay in filing the Complaint is considered by the Appeal Court holding that after the publication was done, nothing was left for the Complainant to concoct any further and therefore, there is no possibility of making allegations as an after thought.

14. The Appeal Court has considered that the Complainant has stated in her evidence that defamatory news was published on the basis of information supplied by Accused Nos. 1 to 3. Written statement and affidavit of Accused No.4-Editor, in civil case - Special Civil Suit No. 6/1998 was produced on record where Accused No.4 has made categorical statement that information for publishing news was given by

Accused Nos. 1 to 3. The Appeal Court has considered that Accused No.4 has tried to put forth a new case that Accused Nos. 2 and 3 had not supplied information. The Appeal Court has found that the subsequent conduct of Accused No.4 (stating in his evidence in present criminal trial that Accused Nos. 2 & 3 did not supply information) is nothing but an effort to save Accused No.2 & 3 and is not believable.

15. The Appeal Court has considered that Accused No.4, for escaping civil liability, under the civil suit, had published an apology. It has come on record the apology was published in small font and on the back page of the newspaper, while defamatory news was printed as banner line with big font.

16. So far as the argument about his statement that the letter was given to him for publication in the newspaper by Accused No.1 Kamalesh Gandhi only, I have perused the oral evidence of Accused No. 4. It is material to note that this witness has admitted in cross-examination that he has not made any efforts for the clarification about earlier statement involving names of Revision Applicants. He has also admitted that he has not filed any further affidavit in the civil case stating that his earlier statement was given under coercion or it was false.

17. The Appeal Court has considered that the Accused Nos. 2 and 3 were the friends of Accused No.1 and were helping her. After considering the fact that litigation was pending between the Complainant and her husband even prior to publication of the news and also that litigation was pending against Accused No.1 and her husband as also that Revision Applicants were friends of Accused No. 1, the appeal Court has held that Trial Court was harsh in sentencing

substantive sentence of imprisonment and has already set it aside, only enhancing the fine amount.

18. In **State Vs. Manimaran (2019) 13 SCC 670**, the Hon'ble Supreme Court has held as under:

"16. As held in *State of Kerala V. Puttumana Illath Jathavedan Namboodiri* (1999) 2 SCC 452, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained."

(emphasis supplied)

19. Therefore, it is not possible to re-appreciate the evidence and to come to a contrary finding. The Magistrate as well as the Sessions Judge has concurrently convicted the Revision Applicants. The substantive sentence of simple imprisonment is already set aside under the impugned order. Overall, the view taken by the Appeal Court can not be faulted.

20. In the aforesaid facts and circumstances and for reasons indicated above, there is no reason to interfere with concurrent findings.

21. Revision Application is dismissed. Rule is discharged.

(M.M. SATHAYE, J.)