

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

CRIMINAL REVISION APPLICATION NO. 131 OF 2014

Dattu Bhima Itkar,
age 37 years, occ. Labour,
R/o Sonari, Tq. Paranda,
District Osmanabad

...Applicant

VERSUS

The State of Maharashtra,
through PSO, P.S. Ambi,
Tq.Paranda, Dist.Osmanabad

...Respondent

.....
Shri A.R.Deokate, advocate for applicant
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 5th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. Heard with the consent of the learned counsel for the parties.

2] The present applicant, who was prosecuted by the police station Ambi, Taluka Paranda, District Osmanabad was tried before the learned Judicial Magistrate, First Class, Paranda in Regular Criminal Case No. 124 of 2012 for the

offences punishable under Sections 452, 354 and 506 of the Indian Penal Code.

Learned Magistrate convicted the applicant for the offence punishable under Section 452 of the Indian Penal Code and directed to suffer two years rigorous imprisonment and to pay a fine of Rs.500/-, in default he was directed to suffer one month rigorous imprisonment. Learned Magistrate also convicted the applicant for the offence punishable under Section 354 of the Indian Penal Code and directed that he shall suffer two years rigorous imprisonment. In addition to that, the applicant was also convicted for the offence punishable under Section 506 of the Indian Penal Code and he was directed to suffer two months rigorous imprisonment on that count. Learned Magistrate directed that all the substantive jail sentences shall run concurrently.

3] Against the said conviction, an appeal was carried before the learned Sessions Judge, Osmanabad. The said appeal was registered as Criminal Appeal No. 24 of 2014 and it was allotted to the file of the learned Additional Sessions Judge, Bhoom. The learned lower appellate court vide judgment and order, dated 11.4.2014 was pleased to dismiss the appeal and thereby confirmed the judgment and order of conviction recorded by the learned Magistrate.

4] Feeling aggrieved thereby the present Criminal Revision Application was preferred before this court on 8.5.2014. Along with the Revision, an application for suspension of substantive jail sentence was also moved. This court on 31.10.2014 allowed the application and thereby suspended the substantive jail sentence and kept the matter for final hearing.

5] Heard Shri A.R.Deokate, learned counsel for the applicant and Shri S.A.Ambad, learned Additional Public Prosecutor for the respondent. With their able assistance, I have gone through the record and proceedings in detail.

6] After hearing the learned counsel for the applicant, there is no doubt in my mind that the prosecution has proved the guilt of the applicant. In my view, the judgment and order of conviction, passed by both the courts below are based on the correct appreciation of the prosecution case warranting no interference.

7] In so far as the quantum of sentence is concerned, it is an admitted position that the applicant was in jail since 7.5.2013 till he was released on bail by this court on 31.10.2014. Thus, the applicant was behind the bar for last 18 months. The substantive jail sentence is two years. In that

view of the matter and in view of the fact that the applicant is already released on bail, it would be too harsh for the applicant to ask him to return to the jail, especially when he has already undergone 3/4th of the substantive jail sentence. Hence, I propose to modify the quantum of sentence only.

8] Accordingly, the present Criminal Revision Application is partly allowed. The judgment and order of conviction passed by learned Judicial Magistrate, First Class, Paranda on 2.1.2014, which was confirmed by the learned Additional Sessions Judge, Bhoom on 11.4.2014 is maintained. However, the quantum of substantive jail sentence is modified to the extent already undergone by the applicant. The other part in so far as the payment of fine is concerned, is maintained. Rule absolute in the above terms.

[V.M.DESHPANDE, J.]

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