

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
BENCH AT AURANGABAD.  
CRIMINAL APPELLATE JURISDICTION.**

**Criminal Revision Application No. 131 Of 2002.**

Dnyandeo s/o Shrirang Bhade.  
Age : 34 Years., Occ.: Agriculturist.  
R/o.: Shedgaon,  
Tal. Shrigonda, Dist. Ahmednagar. :: **Applicant.**

**Versus.**

- (1) Laxman Yeshwant Bhade.  
Age : 33 Years., Occ.: Agriculturist.
- (2) Gorakh Kashinath Bhade.  
Age : 28 Years., Occ.: Agriculturist.
- (3) Rohidas Yeshwant Bhade.  
Age : 33 Years., Occ.: Agriculturist.
- (4) Kashinath Mahadu Bhade.  
Age : 63 Years., Occ.: Agriculturist.

All R/o.: Shedgaon,  
Tal.Shrigonda,Dist. Ahmednagar.

- (5) The State of Maharashtra. :: **Non-Applicants.**

**Appearance ==>**

Mr. D.J. Patil, Advocate h/for Mr. N.B. Suryawanshi, Advocate for the Applicant.

Mr. V.V. Bhavthankar, Advocate for Non-Applicant Nos.1 to 4.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra / Non-Applicant No.5.

**CORAM : V.M. DESHPANDE, J.**

**DATE : 20<sup>th</sup> FEBRUARY, 2015.**

**J U D G M E N T :-**

Present Criminal Revision Application is filed by the First Informant questioning the correctness of Judgment and order dated 19<sup>th</sup> March, 2012 passed by the learned Judicial Magistrate, F.C., Shrigonda, Dist. Ahmednagar in Regular Criminal Case No.1 Of 1999 whereby, the learned Magistrate convicted Non-Applicant Nos. 1 to 4 for the offences punishable under Section.s.325, 341 read with 34 of the Indian Penal Code however, instead of sentencing them, extended the benefits of provisions of the Probation of Offenders Act, 1958 to them, without calling the report from the Probation Officer.

[2] I have heard Mr. D.J. Patil, Advocate h/for Mr. N.B. Suryawanshi, Advocate for the Applicant, Mr. V.V. Bhavthankar, Advocate for Non-Applicant Nos.1 to 4 and Mr. V.H. Dighe, Additional Public Prosecutor for the State / Non-Applicant No.5.

[3] This court is not considering the correctness of judgment dated 19<sup>th</sup> March, 2012 passed in Regular Criminal Case No.1 Of 1999 holding Non-Applicant Nos. 1 to 4 guilty for the offences punishable under Section.s. 325, 341 read with 34 of the Indian Penal Code. It is informed that, Non-Applicant Nos. 1 to 4 have also not preferred any Appeal challenging their conviction.

[4] The learned counsel for the applicant has submitted that the learned trial court has committed mistake in extending the benefits of provisions of the Probation of Offenders Act, 1958 to Non-Applicant Nos. 1 to 4, without calling the report from the Probation Officer.

[5] In order to extend the benefits of provisions of the Probation of Offenders Act, 1958, calling of the report from Probation Officer is

mandatory. When any person is found guilty, instead of sentencing him to any punishment and when no previous conviction is proved against him, the court having regard to the circumstances of the case including the nature of the offence and the character of the offender, can release him on probation of good conduct. Though the court is not bound by the report of the Probation Officer but, it must call for such report before the case come to its conclusion.

[6] In the present case, admittedly the report from the Probation Officer was not called. In spite of that, the learned Magistrate has extended the benefits of provisions of the Probation of Offenders Act, 1958 and directed that Non-Applicant to keep peace and be of good behaviour upto one year and directed them to execute the bonds to that effect. In absence of calling of the report from the Probation Officer, the order passed by the learned Magistrate, extending the benefits of provisions of the Probation of Offenders Act, 1958, was not proper on the part of court below.

[7] Now, question arose, whether the matter be remanded back to the trial court for calling report from the Probation Officer. ?.

We cannot forget that, incident had occurred on 29<sup>th</sup> October, 1998. The trial was concluded on 19<sup>th</sup> March, 2002 and this Criminal Revision Application came up for its final hearing in the year 2015.

[8] I have an advantage to go through the decision of this court in case of Kaluram Nivrutti Tambe V/s. The State of Maharashtra, reported in 2007(1) Maharashtra Law Journal (Criminal), 543.

In the said case, the applicant therein was convicted by the Assistant Sessions Judge, Pune for the offences punishable under Section.s. 307 and 326 of the Indian Penal Code. Against the said order, the applicant

therein preferred an appeal in the Sessions court, wherein the appellate court reduced the sentence and altered the conviction from Section.s. 307 and 326 to Section.s. 326 and 324 respectively. Being aggrieved by the said order, Criminal Revision Application was preferred. In paragraph No.4 of the aforesaid judgment, this court has observed as under :-

“ I have perused the judgment and order passed by the trial court as also by the lower Appellate court. It is an admitted position that the injury that was caused to the complainant was not on a vital part, it was on the shoulder and the injury was caused on the mandible. Considering this aspect, in my view, the lower appellate court erred in convicting the accused for the offence punishable under section 326 particularly when the Sessions court had not accepted the prosecution regarding the discovery of the knife by the accused. The conviction, therefore, is altered from Section 326 to section 324. The incident in question had taken place on 8<sup>th</sup> October, 1986 and according to the prosecution, there was a quarrel between the complainant and the applicant and according to the prosecution, the applicant suspected that the complainant Meghraj had illicit relation with his sister. The applicant was released on bail during the pendency of the appeal. During this period, he has not come to the adverse notice of the police and no complaint has been received from the complainant. In view of these facts and circumstances, in my view, the applicant is entitled to be given the benefit of Section 4 of the Probation of Offenders Act, 1958.”

[9] This court in the present case on 30<sup>th</sup> January, 2015 directed the learned Additional Public Prosecutor to obtain instructions / report from the

Police Station Officer, Shrigonda as to whether, in past, any offence is registered against Non-Applicant Nos. 1 to 4 after the offence was registered against them on 29<sup>th</sup> October, 1998. On 6<sup>th</sup> February, 2015 the learned Additional Public Prosecutor upon instructions from Shrigonda Police Station submitted the report disclosing that, no offence is registered against Non-Applicant Nos. 1 to 4 after the incident of 1998. Thus, it is clear that the incident for which Non-Applicant Nos. 1 to 4 were convicted and were directed to be released upon executing bond of good behaviour by giving benefits of provisions of the Probation of Offenders Act, 1958, was the solitary incident. The said report is taken on record and marked “X” for the purpose of identification.

[10] In that view of the matter, it will be futile exercise and waste of judicial time to remand the matter for passing appropriate order by the learned Magistrate. In that view of the matter, especially when no offence is registered against Non-Applicant Nos. 1 to 4 from the year 1998 till 2015, to save the judicial time and futile exercise, I dismiss the Criminal Revision Application. Rule is discharged.

**(V.M. DESHPANDE, J.)**