

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

CRIMINAL REVISION APPLICATION NO.23 OF 2012

Ratnamala Suresh Borse	..Petitioner.
Versus	
Vishram Pitamber Borse	..Respondents
and others	

Mr.G.D.Tanpure h/f Mr.N.V.Gaware, Advocate for the applicant.
Mr.U.S.Mote, APP for the respondent/State.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 30th March, 2015.

PER COURT :-

1. Heard.

2. The present applicant happens to be the original complainant in Crime No.52 of 2003 registered at Sindkheda Police Station, Dhule on 29.07.2003. The respondents herein were accused in Crime No.52 of 2003. After completion of the investigation the charge-sheet was filed on 06.08.2003. The case was registered as S.T.C.No. 645 of 2003. The learned Judicial Magistrate, First Class, Sindkheda, vide judgment and order dated

25.03.2008 has been pleased to acquit all the accused of the offences with which they were charges. Hence this revision application.

3. Such of the facts necessary for decision of this present revision application are as under:-

4. The complainant-Ratnamala lodged a report at Sindkheda Police Station on 29.07.2003 alleging therein that on 28.07.2003 she alongwith her husband and other relatives had assembled at village Amrale for mourning the death of her mother-in-law. Her husband, brother-in-law and others were performing the rites. She had not attended the funeral ceremony because they had not received the intimation. According to her the original accused No.1 Vishram had informed about the rites to performed and hence she alongwith her husband, sister and other relatives had attended the said function. On the same day when she was sitting in front of her house alongwith her sister and other relatives, her husband was also sitting in the tent just opposite their house. It is alleged that original accused No.1 Vishram had addressed the people by saying that the informant and her husband had not looked after her mother-in-law and therefore they should not be permitted to attend the function and that they should leave the place. Her husband had refuted the

said allegations. There was chaos and in the said chaos accused Nos.2 & 3 had abused her in filthy language and had attempted to pull her by holding her arms. Her sister had attempted to restrain them. However, it was of no avail. They had used abusive language which would shatter her identity as a chaste women. That the accused No.1 had asked the people to spit on her face. People had tried to intervene. However the accused had insulted her by attempting to pull her saree. Thereafter she alongwith her husband had been to Sindkheda Police Station and attempted to lodge a report for want of territorial jurisdiction, they were they referred to Chimthana Police Station for lodging the report. On the next day they had lodged the report at Chimthana Police Station which is marked as Exh.15.

5. In the cross-examination it is specifically admitted by the complainant that she has denied the correctness of the report Exh.15 in Ahmednagar Court i.e. in S.C.No. 131 of 2004. In para No.5 of her deposition there are omissions and contradictions which are inherent and are material in all aspects. In para No.7 of her deposition she has specifically admitted that she had no opportunity to read the report Exh.15 after it was recorded by the police. According to her she had got the copy of the report, when it was called before the

Sessions Court, Ahmednagar and that was the first time when she read the contents of the report and had admitted that the said contents are incorrect. In view of this, it can be inferred that she had no knowledge of the contents of report of Exh.15.

6. It is true that the First Information Report is not a substantive evidence and can be used only for the purpose of proving omission and contradiction when confronted by the complainant. However, it would be the first step for initiating the prosecution. In view of this it can not be said that the prosecution has proved the guilt of the accused beyond the reasonable doubts as the complainant had categorically stated on oath that the contents of Exh.15 are incorrect.

7. The learned counsel for the applicant submits that although it is stated that the contents are incorrect that was said so in S.C.No.131 of 2004. However, in the present case she has proved the contents of the report at Exh.15. This aspect would reflect upon the conduct of the complainant and by no stretch of imagination it can be said that it is a sterling testimony. Basically the deposition does not inspire the confidence of the Court. The present revision application is challenging the judgment and order of acquittal. An

acquittal cannot be converted into conviction in a revision application. Moreover, it is settled principle of law that whenever two views are possible one in favour of the accused should prevail over the judicial conscience of the court.

8. In view of this revision application being *sans* merits stands dismissed.

[SMT. SADHANA S. JADHAV,J.]