

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

Criminal Revision Application No. 212 of 2003

Shriram s/o. Ambaji Babar,
Age : 47 years,
Occupation : Agriculture,
R/o. Astur, Taluka : Loha,
District : Nanded.

.. Revision Applicant
(Original accused)

versus

The State of Maharashtra
(through Police Station, Malkoli,
Taluka : Loha, District : Nanded)

.. Respondent.

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Mr. Mahesh P. Kale, Advocate, for the revision applicant.

*Mr. U.S. Mote, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 31ST MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. M.P. Kale for the revision applicant, and the learned APP Mr. U.S. Mote for the respondent - State.
2. The applicant herein is convicted for the offence punishable

under Sections 353, 504 and 506 of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for 3 months on all counts, and to pay fine of Rs. 500/-, in default of payment of fine, to undergo simple imprisonment for one month. The substantive sentences were directed to be undergone concurrently. The said judgment and order of conviction and sentence was passed by the learned Judicial Magistrate (F.C.), Kandhar, on 22nd July 1996, in Summary Criminal Case No. 201/1995.

3. Being aggrieved by the said judgment and order, the applicant herein has filed Criminal Appeal No. 51/1996 in the Court of Sessions at Nanded. The learned Additional Sessions Judge, Nanded, vide judgment and order dated 25th June 2003, has been pleased to acquit the accused / applicant of the charges punishable under Sections 504 and 506 of the IPC. However, the conviction and sentence imposed upon the applicant, for the offence punishable under Section 353 of the IPC is maintained. Hence, this revision application.

4. Such of the facts necessary for the decision revision application are as follows :-

That, the complainant had filed a written application before PSI, Malakoli Police Station [Taluka : Loha, District : Nanded], on 2nd March 1995, alleging therein that she happens to be working as a Nurse at Primary Health Centre, Malakoli, Sub-Centre at Ashtur. On 1st March 1995, the applicant had been to the said hospital i.e. Primary Health Centre and had asked the complainant to close down the shutters of the Primary Health Centre. That, he intended to get previous Nurse to the said Primary

Health Centre. That, he had threatened her of dire consequences, in the eventuality, she did not oblige him. He had even abused her and the complainant was constrained to close down shutters of the Primary Health Centre. On the basis of said report, Crime No. 9/1995 was registered against the applicant for the offence punishable under Sections 504, 506 and 353 of the Indian Penal Code. The case was registered as Summary Criminal Case No. 201/1995. After completion of investigation, charge sheet was filed on 6th March 1995. The prosecution examined six witnesses to bring home the guilt of the accused.

5. The complainant Janabai d/o. Uttamrao Panchal is examined as PW 1. She has deposed before the court in consonance with her report. She has further deposed that she had deputed her brother Digambar to call upon her father. She has proved the contents of the written report which is marked at Exhibit 11. In the cross examination, the complainant has improved the case further and has stated that the accused had abused her by using unparliamentary words. She had denied the suggestion that two days prior to the incident, daughter of the accused had been to the Sub-Centre for getting tablets for treating Cholera and she had not given the same. The complainant had not stated in her First Information Report, that there are witnesses to the said incident. However, it appears from the record, that the story was subsequently developed by way of recording supplementary statement and that additional witnesses were cited. Her father and brother are not witnesses to the incident.

6. PW 3 Digambar s/o. Uttamrao Panchal, who happens to be the brother of the complainant, has stated that at the time of incident, he

was present in the hospital and the alleged incident has occurred in his presence. It is elicited in the cross examination, that the school is adjacent to the Sub-Centre. When he had been to the Sub-Centre, his sister was writing and there were patients in the hall. He had heard the abusive language of the present applicant. He has further admitted that the sister of the accused had taken him away. There are material omissions and contradictions in his evidence.

7. The learned Counsel for the applicant submits that PW 4 Bapurao s/o. Ganpatrao Nagargoje and PW 5 Bhujangrao Premrao Gudhe are got up witnesses. PW 4 Bapurao has deposed before the court, that the complainant is serving as an Auxiliary Nurse at Sub-Centre Ashtur. She is expected to be on duty for 24 hours. PW 4 Bapurao Nagargoje was in-charge of the Primary Health Centre at Malakoli and Sub-Centre Ashtur was working under him. The complainant had allegedly informed him, that she had been threatened and abused by one of the villagers and he had directed her to lodge a report at the Police Station. It is elicited in the cross examination, that the complainant had not given any written application to PW 4 Bapurao Nagargoje.

8. PW 5 Bhujangrao s/o. Premrao Gudhe is another eye witness. The learned Counsel for the applicant submits that the name of PW 5 Bhujangrao does not appear in the FIR, but he has been arraigned as a witness only by way of supplementary statement and hence, he is a got up witness.

9. Perused the record & proceedings.

10. Upon appreciation of the evidence of the complainant, it appears that the applicant had threatened the complainant to shut down the Primary Health Centre. However, the request made by him cannot be considered to be, prima facie, an offence under Section 353 of the IPC. However, it is a matter of record, that at the relevant time, the complainant was a public servant and asking her to shut down the Primary Health Centre, would affect the villagers adversely and it did amount to obstruction of her public duties. In view of this, this Court is of the opinion that the conviction for the offence punishable under Section 353 of the IPC needs to be maintained.

11. The incident is dated 1st March 1995. The applicant has undergone the substantive sentence of about 20 days. The applicant has been sentenced to undergo rigorous imprisonment for three months. After a lapse of 20 years, it would not be proper to send the applicant to jail for an incident dated 1st March 1995. At the time of incident, the applicant was about 40 years old. As on today, it appears that he is a senior citizen. In view of this, ends of justice would be met if the applicant is sentenced to the period already undergone. The sentence of fine deserves to be maintained.

12. In the result, the Revision Application is partly allowed.

(A) The conviction of the applicant, for the offence punishable under Section 353 of the Indian Penal Code is maintained.

(B) However, the substantive sentence imposed upon the applicant is reduced to the period which he has already undergone. Bail bonds of the applicant stand cancelled. The sentence of fine is maintained.

13. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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