

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

CRIMINAL REVISION APPLICATION NO. 220 OF 2003

Subhash Vithal Bidgar .. applicant

Versus

Sandipan Sambhaji Bidgar & Ors. .. Respondents

Mr. Vilas P. Savant h/f. Mr. A.M. Gaikwad, Advocate for the applicant.

Mr. S.B. Bhapkar, Advocate for respondent Nos. 1 to 10.

Mr. U.S. Mote, APP for respondent/State.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 18.04.2015

P.C. :-

1. Heard learned Counsel for the applicant and learned APP as well as learned Counsel for respondent Nos.1 to 10. The applicant herein happens to be the original complainant in Crime No.162 of 2002 registered at Parali Rural Police Station, for the offences

punishable under sections 147, 148, 326, 324, 323, 506 r/w 149 of the Indian Penal Code and section 135 of the Bombay Police Act. The case was registered as Regular Criminal Case No.5 of 2003. The prosecution has examined seven witnesses to bring home the guilt of the accused. Learned Magistrate vide judgment and order dated 13.05.2003 has been pleased to convict the accused for the offences punishable under sections 147 and 323 read with 149 of the Indian Penal Code. However, learned Magistrate has released the accused upon entering into probation bond of Rs.3000/- each for a period of one year. The applicant herein has challenged the said judgment and order on several grounds.

2. Learned Counsel for the applicant has drawn attention of this Court to the points framed by the learned Magistrate. It appears from the record that upon appreciation of evidence, learned Magistrate has arrived at a conclusion that the prosecution has satisfactorily

proved that on 25.11.2002 at about 12 noon at village Daulatpur, accused were members of unlawful assembly and in prosecution of common object of the said assembly, have voluntarily caused hurt to the complainant and the witnesses by means of knife. Learned Magistrate has also arrived at a conclusion that the prosecution has proved that on the aforesaid date, time and place, accused No.5 has voluntarily caused hurt to the complainant and rest of the accused have caused injuries to the complainant and other witnesses by means of knife and sticks.

3. Learned Magistrate has held that the prosecution has not proved that on the aforesaid date, time and place, accused were members of unlawful assembly and were at that time armed with deadly weapons i.e. knife and sticks. Learned Counsel for the applicant has fairly submitted that it would be incorrect finding of learned Magistrate to record a finding that the prosecution has not proved the factum of possession of knife and sticks

by the accused when in the same breath it is said that the prosecution has been able to prove beyond reasonable doubt that the accused were the authors of the injuries sustained by the complainant and the other witnesses with knife and sticks. Learned Magistrate had in the facts and circumstances of the case released the accused by directing them to remain under probation for a period of one year. The said period is over. Learned APP has submitted on record the report of probationary officer holding that the accused have successfully undergone the probation period. It is true that the points for determination as framed by the learned Magistrate and the findings recorded thereupon are not in consonance with the factual evidence adduced by the prosecution on record. However, learned Counsel for the respondents submits that the very fact that the Magistrate has held that the offences under section 323 r/w 149 of IPC have been proved, it could simply be inferred that the offence defined under section 148 of the IPC would merge into

offence punishable under section 149 of IPC. Hence, at this stage, it would not be appropriate to record a finding that the accused would necessarily be convicted for the offence punishable under section 148 of the Indian Penal Code.

4. Learned Counsel for the applicant further submits that learned Magistrate has not considered the criminal antecedents of the accused and has been pleased to release them on execution of probation bond and the same has resulted into grave miscarriage of justice. Learned Counsel further submits that the punishment awarded for an offence shall be proportionate to the offence committed by the accused and in the eventuality that there are criminal antecedents, relief under the provision of the Probation of Offenders Act, shall not be extended to the accused, as the policy for imposing penalty would no more act as deterrent factum. Although, the submissions are appealing, the judgment and order

(6)

crirev220.03

cannot be set aside in revision application, in view of the embargo under section 401(3) of Cr.P.C. In view of this, revision application stands dismissed and is accordingly disposed of.

[SMT. SADHANA S. JADHAV,J.]

snk/2015/APR15/crirev220.03