

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 293 OF 2014

Babasaheb Runza Jadhav

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Vivek Salunke Advocate for Applicant

Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 30, 2015.

PC :

Rule. Rule returnable forthwith with consent of the parties.

Heard the learned counsel for the applicant.

2) The applicant herein was convicted for the offences punishable under Sections 279 and 304A of Indian penal Code and Section 184 of the Motor Vehicles Act by the Judicial Magistrate, First Class, Jt. Court, Nashik Road vide judgment and order dated 31.3.2009.

3) Being aggrieved by the said judgment and order, the applicant herein had filed Criminal Appeal No.69 of 2009 before the Sessions Court at Nashik. The learned Appellate Court vide judgment and order dated 5.7.2014, was pleased to dismiss the appeal. Hence, this Revision Application. While dismissing the appeal, the learned Addl. Sessions Judge had continued the bail

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bonds of the applicant for a further period of six months in terms of Section 437-A of Cr.P.C.

4) Being aggrieved by the judgment and order of the learned appellate Court, the applicant has filed this Revision Application.

5) This Court vide order dated 12.10.2015, had suspended the substantive sentence imposed upon the applicant and had directed him to be enlarged on bail. The learned counsel for the applicant, at the time of arguing the bail application, had made a statement before this Court that the original complainant had filed an application before the Sessions Court that the victim has received the accident claim. Hence, they do not wish to prosecute the application any further.

6) It is pertinent to note that the original complainant had filed the said application on 5.6.2014 during the pendency of the appeal. The learned Sessions Court had not taken the said application into consideration and the fact that the original complainant was compounding the said offence voluntarily had not inspired confidence of the Court and, therefore, the application seeking composition of the offence was rejected by the learned Sessions Court.

7) The learned counsel for the applicant rightly submits that in fact the appellate Court ought to have taken the application filed by the complainant into consideration for composition of the offence. The learned counsel submits that although the offence punishable under Sections 304A and 279 of IPC is a non-compoundable offence. The offence can be compounded with the permission of the Court in the interest of justice.

8) Today, the complainant is present before the Court and the identity of the complainant has been verified by learned APP. The complainant has also identified his signature on the application made by him before the appellate Court in the application dated 5.6.2014. It is apparently clear that the complainant is compounding the said offence voluntarily and without any coercion or influence by the applicant.

9) Learned counsel for the applicant has placed on record the pursis on behalf of original complainant wherein original complainant has reiterated that complainant is not willing to prosecute any further and voluntarily desires to compound the offence. Pursis is taken on record and marked as article 'X' for the purpose of identification. Original complainant is present before the Court and his identity has been verified by learned APP.

10) Learned counsel for the applicant has placed reliance upon the Judgment of this Court in the case of **Sarjerao Shamrao Dhas & Ors Vs. State of Maharashtra (ALL MR [Cri] 219)** wherein this Court had permitted the parties to compound the offence under section 147, 148, 307 r/w 34, 332 r/w 149 of Indian Penal Code. Implicit reliance was placed on Judgment of Hon'ble Apex Court in the case of **Salim Vs. State of M.P. (1995 Supp (4) S.C.C. 631)**. In the said case, conviction of the accused was confirmed and they were sentenced to the period already undergone.

11) The same prayer can be granted in the present revision application. It is a matter of record and finding recorded by both the Courts that accident had occurred due to negligence of the present applicant. Applicant herein has compensated the parents of the victim and therefore they do not wish to prosecute the applicant any further. Hence, the conviction of the applicant for offence punishable under section 279 and 304 (A) of Indian Penal Code is confirmed and he is sentenced to the period already undergone. Application is being allowed under section 320 (6) of Code of Criminal Procedure, 1973.

ORDER

- (i) Revision is partly allowed.
- (ii) The Judgment and Order passed by Additional Sessions Judge, Nashik in Criminal Appeal No. 69 of 2009 confirming the Judgment and Order dated 31/03/2009 passed by Judicial Magistrate First Class, Joint Court Nashik Road in S.C.C. No. 1160 of 1999 is hereby upheld.
- (iii) Conviction of the applicant for offence punishable under section 279, 304 (A) of Indian Penal Code along with section 184 of Motor Vehicles Act is confirmed.
- (iv) Sentence of fine is also confirmed.
- (v) Applicant is sentenced to the period already undergone.
- (vi) Bail bonds of the applicant stand cancelled.
- (vii) Rule made absolute in the above terms.
- (viii) Revision application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)