

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPEAL NO.350/2014**

(Smt. Manda Tukaram Dhole ..vs.. The State of Maharashtra, through PSO Kalamb, Dist. Yavatmal and 5 ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. T. G. Bansod, Advocate for appellant.
Mr. Jawade, A.P.P. for respondent no.1-State.
Mr. S. V. Darne, Advocate for respondent nos. 2 to 6.

CORAM : A. B. CHAUDHARI, J.

DATE : DECEMBER 8, 2015.

Criminal Application No. 113/2015

Learned counsel for the applicant has filed the present application for permission to file documents. Learned counsel for the non applicant submits that the applicant had applied for assisting the prosecution and was very much before the trial Judge. Admittedly, the documents sought be filed now by this application were not even called and did not form even part of the charge sheet before the trial Judge. To include the proposed documents in the charge-sheet now after the trial is over is not permissible in law. There is no specific explanation as to why the applicant did not move the prosecuting agency for filing of the alleged documents, if any, or even to the Court for filing those documents. Such a belated attempt to file documents before this Court cannot be allowed.

Be that as it may, the present application for permission to file documents is liable to be rejected. Hence, Criminal Application No.113/2015 is rejected.

Criminal Appeal No.350/2014

This appeal is directed against judgment and order dated 07.05.2014 passed by Ad hoc Additional Sessions Judge, Yavatmal in Special Case No.6/2013.

Adverting to the merits of the matter, it is seen that the trial Judge has recorded finding of fact in paragraph 19 since the trial Judge did not want to believe the testimony without corroboration by independent person. I quote relevant portion from paragraph 19 as under:

“19. Beside the evidence of complainant no other witnesses who were present at the time of incident supported to the testimony of complainant that the accused persons assaulted and outraged the modesty of Mandabai. It is pertinent to note that police has not seized the torn blouse of Manda. It is pertinent to note that if we believe the evidence of victim it is very serious and grave offence which taken place in PHC in front of several person, but the police Kalamb, has not taken any cognizance. On the other hand such type of serious offence has been committed on the nurse who is discharging her duties in PHC and such type of offence has taken place twice or thrice but nobody has taken any action. The culprits are the employees of PHC Nanza but the authorities has not taken any step to curb such type of activities in PHC Nanza. Record shows that the police has

taken cognizance on 20.02.2012 i.e. after 20 days and no delay is explained by the prosecution.”

In the light of the above and in view of the dictum laid down by the apex Court in **Darshan Singh ..vs.. State of Punjab and others; (2010) 2 SCC 333,** particularly paragraph 61 thereof, it is not possible for me to convert an order of acquittal in conviction. Paragraph 61 reads thus:

“61. In a case of acquittal, if the trial court's view is a possible or plausible view, then the Appellate Court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial court. The Appellate Court or the High Court would not be justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the Appellate Court or the High Court.”

In view of above, Criminal Appeal No.350/2015 is rejected.

JUDGE