

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1150 OF 2016
IN
CRIMINAL APPEAL NO. 47 OF 2016

Shaikh Ahmed Shaikh Hussain .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....
Mr Joydeep Chatterji, Advocate for the applicant
Mr N. T. Bhagat, APP for respondent/State
.....

CORAM : M.T. JOSHI, J.
DATE : 29/02/2016

ORAL ORDER:

. Heard both the sides.

2. The applicant (original accused No. 9) Shaikh Ahmed Shaikh Hussain has prayed for suspension of the conviction recorded by the learned Assistant Sessions Judge-2, Aurangabad vide order dated 25.01.2016 in Sessions Case No. 190/2011, for the offences punishable under Sections 143, 147, 306, 452, 294, 323, 504, 506 read with 149 of the Indian Penal Code. The applicant herein along with other co-accused was sentenced to suffer various terms of punishment, the highest of the

same being rigorous imprisonment for eight years for the offence punishable under Section 306 read with 149 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. The prosecution case would show that, since allegedly 2½ years old daughter of accused/appellant No. 1 - Asid and accused/appellant No. 3 - Sayrabai, was subjected to rape by Mannan son of deceased Tayyab Shaikh, all the accused had barged into the house of deceased Tayyab. The said Mannan fled away from the house. In the circumstances, on the following day, they again came at the house of deceased Tayyab and started raising quarrel with the inmates. They also beat Mannan and started manhandling the family members of the deceased. Certain threats of bringing kerosene and burning the house of deceased were made. Ultimately, due to the said incident, Tayyab consumed poison and committed suicide and therefore on the basis of the complaint, offence came to be registered.

4. Mr Chatterji, learned counsel points towards the fact that, P.W. 1 - Munifa w/o Shaikh Kadu was claimed to be the eye-witness to the incident, who had

later on relayed the information of the same to other witnesses including P.W. 3 – Shaikh Kadu Shaikh Rahim. He submits that the statement of said P.W. 1 – Munifa would not at all name the present applicant i.e. original accused No. 9, however, statement of P.W. 3 – Shaikh Kadu would show that P.W. 1 – Munifa while giving information about the incident to the witnesses had named the present applicant by saying that he along with other had asked co-accused to pull P.W. 1 – Munifa out of the house and they were about to commit rape on Munifa.

. Mr Chatterji submits that, the present applicant is a Police Head Constable. The ld. Sessions Judge has not appreciated the evidence in correct perspective as detailed above. He submits that, if the conviction is not suspended, the great prejudice would be caused to the present applicant as his job would be in jeopardy.

5. On the other hand, the learned APP submits that the learned Sessions Judge has convicted all the accused including the present applicant for the above referred offences. He further pointed towards the appreciation

of the evidence made by the learned Sessions Judge of the Shaikh Kadu to whom the information was given by the eye-witness P.W. 1 – Munifa. He submits that, therefore the Sessions Judge has come to the conclusion that present applicant was also involved in the incident and therefore he submits that there is material against the present applicant for his conviction.

6. The learned APP further relied upon the judgment of the Hon'ble Apex Court in the case of **Central Bureau of Investigation, New Delhi Versus M. N. Sharma** reported in 2009 AIR (SC) 1185, wherein the order of the High Court of suspension/stay of conviction was set aside as the learned Single Judge of the High court has not indicated any reasons for grant of suspension/stay of conviction.

7. Taking into consideration all the facts on record that the eye-witness in the Court has not named the present applicant as one of the preparator of the crime and that P.W. 3 – Shaikh Kadu to whom allegedly the information was given later on by the eye-witness had named him, without making any comment on the merit regarding the legality of the evidence at this stage and

considering the fact that the present applicant is working as Police Head Constable, in the background of the case as detailed supra, in my opinion, the conviction can be suspended. In the result, the following order.

ORDER

(I) The Criminal Application is hereby allowed.

(II) The conviction recorded by the learned Assistant Sessions Judge-2, Aurangabad, vide order dated 25/01/2016 in Sessions Case No. 190/2011 is hereby suspended till the decision of the Criminal Appeal No. 47 of 2016.

8. The Criminal Application is allowed in above terms.

**[M.T. JOSHI]
JUDGE**

sgp