

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

CRIMINAL REVISION APPLICATION NO. 184 OF 2014

WITH

CRIMINAL APPLICATION NO. 1225 OF 2014

IN REVN/184/2014

WITH

CRIMINAL APPLICATION NO. 2293 OF 2015

IN REVN/184/2014

**ANAND SUDHAKAR SALVE
VERSUS
THE STATE OF MAHARASHTRA**

.....

Advocate for Applicants : Mr. Niteen V. Gaware
APP for Respondent-State : Mr. G. O. Wattamwar

.....

CORAM : V. K. JADHAV, J.

RESERVED FOR ORDER ON : 26.02.2016

ORDER PRONOUNCED ON : 11.03.2016

ORDER :-

1. The revision applicant is original accused No.4 in Sessions Case No.05 of 2002 disposed of by learned First Ad-hoc Additional Sessions Judge, Ahmednagar. Being aggrieved by the judgment and order of conviction dated 30.08.2002 passed by learned First Ad-hoc Additional Sessions Judge, Ahmednagar, in Sessions Case No.05 of 2002, the revision applicant-original accused No.4 has preferred this Criminal Revision Application. Learned First Ad-hoc Additional Sessions Judge, by judgment and order of conviction dated 30.08.2002, found the revision applicant-original accused No.4

guilty of the offences punishable under sections 323 and 504 r/w 34 of Indian Penal Code (for short "IPC") and instead of sentencing the revision applicant-original accused No.4 to imprisonment or fine, released him after giving admonition to him as provided under Section 360(3) of the Code of Criminal Procedure (for short "Cr.P.C.").

2. Brief facts giving rise to the present Criminal Revision Application are as follows:

a) On 11.11.2001, removal of encroachment over Grampanchayat property was undertaken at village Nannaj, Taluka Jamkhed, and accordingly, Police *Bandobust* was also arranged. The persons, who allegedly made encroachment over the public property, started obstructing the work of removal of encroachment and they were consequently prevented by the police force. After the work of removal of encroachment was completed, the Government officials i.e. the Tahsildar etc. and the Police officials went to the Government rest house at Nannaj at about 2.30 p.m. As per prosecution story, accused Nos. 1 to 6 had entered inside of the rest house and abused the Government officers, as aforesaid, present there. As per prosecution story, when the complainant and other Policemen were trying to oust the accused persons from the premises of Government rest house, the untoward incident had taken place. So far as the

present revision applicant-original accused No.4 is concerned, as per prosecution story, he caught hold of hands of the complainant and other accused persons pressed the neck of the complainant. On the basis of complaint lodged by P.W.1 Baban Makhare, who is a Police Constable, Crime No.183 of 2001 came to be registered at Police Station, Jamkhed. Even the complainant-Police Constable Baban Makhare was referred to hospital for his medical examination on the same day. After completion of the investigation, the concerned investigating officer had submitted charge sheet against the accused persons before Judicial Magistrate First Class, Jamkhed, and since the offences alleged to have been committed by the accused are triable by the Court of Sessions, the case was committed to the Sessions Court, Ahmednagar.

b) The Predecessor of learned First Ad-hoc Additional Sessions Judge, Ahmednagar, vide Exh.16, framed charges against accused persons for the offences punishable under Sections 120-B, 143, 147, 353, 332, 506 and 149 of IPC and Section 135 of the Bombay Police Act. All the accused pleaded not guilty of the charges and claimed to be tried. The prosecution has examined in all ten witnesses to substantiate the charges leveled against the accused. Defence of the accused is of total denial and false implication in the crime. After completion of prosecution evidence, statements of accused persons

were recorded under Section 313 of Cr.P.C. Learned First Ad-hoc Additional Sessions Judge, by order dated 30.08.2002 in Sessions Case No. 05 of 2002, found the present revision applicant-original accused No.4 guilty of the offences punishable under Sections 323 and 504 r/w 34 of IPC and instead of sentencing him to imprisonment or fine, released him by giving him admonition as stated above.

3. Learned counsel for the applicant submits that though, vide Exh.16, charge was framed in Sessions Case No. 05 of 2002 against all the accused including the present revision applicant for the offences punishable under Sections 120-B, 143, 147, 353 r/w 149 of IPC, 332 r/w 149 of IPC, 506 r/w 149 of IPC and Section 135 of the Bombay Police Act, learned First Ad-hoc Additional Sessions Judge found all the accused, including the revision applicant, guilty of the offences punishable under Sections 323 and 504 of IPC and convicted them under those penal provisions r/w Section 34 of IPC. Learned counsel submits that there is no specific charge under Sections 323 and 504 of IPC. Even then, trial court convicted all the accused for the offences punishable under Sections 323 and 504 r/w 34 of IPC. Learned counsel submits that in any case, offences punishable under Sections 323 and 504 cannot be said to be minor offences as against the specific charge of Sections 353, 332 r/w 149 and Section 506 r/w 149 of IPC. Learned counsel submits that there

is clear distinction between the provisions of Section 34 and Section 149 of IPC. So far as the charge under Section 149 of IPC is concerned, there is no question of common intention as provided under Section 34 of IPC. Learned counsel submits that the said irregularity in recording conviction is not curable. The revision applicant was misled in his defence by the absence of charge under Section 34 of IPC. Learned counsel thus submits that conviction against the revision applicant with the aid of Section 34 itself, is illegal and liable to be set aside on this ground alone.

4. Learned counsel for the revision applicant submits that even though the charges leveled against all the accused, including the revision applicant, are triable by the Magistrate, the case was committed to the Court of Sessions. Learned counsel submits that the accused persons have not committed offence triable exclusively by the Court of Sessions. Learned Sessions Judge should have sent back the case to the Chief Judicial Magistrate or to any other Magistrate competent to try that particular offence. Learned counsel submits that the provisions of Section 228(1)(a) of Cr.P.C. takes away the jurisdiction as soon as the offence appears to be not triable by the Court of Sessions. Learned counsel submits that the First Ad-hoc Additional Sessions Judge has not followed the procedure and as such, rendered his judgment and order of conviction as without

jurisdiction. Learned counsel submits that, on this count alone, the judgment and order of conviction passed by learned First Ad-hoc Additional Sessions Judge, Ahmednagar, is liable to be quashed and set aside.

5. Learned counsel for the revision applicant submits that, though the provisions under Section 360(3) of Cr.P.C. cannot be made applicable and though the provisions of Probation of Offenders Act, 1958 are made applicable to this region, learned First Ad-hoc Additional Sessions Judge has released the revision applicant-original accused No.4 after giving admonition to him as provided under Section 360(3) of Cr.P.C. Learned counsel submits that thus, the order to release the revision applicant on admonition as provided under Section 360(3) of Cr.P.C. is not proper, correct and legal and the same is liable to be quashed and set aside.

6. Learned counsel submits that the prosecution has not examined any independent witnesses to substantiate the charges leveled against the accused. Learned counsel submits that evidence of PW1-Police Constable Baban Makhare is full of omissions and contradictions. Learned counsel submits that as deposed by PW1-Police Constable Baban Makhare, he has lodged F.I.R. at Jamkhed Police Station at 4.10 p.m. and thereafter, he was referred to Rural

Hospital, Jamkhed for treatment. However, PW4-Dr. Sanjiv Kisanrao Mundhe, as per his own evidence, had examined PW1-Police Constable Baban Makhare at about 3.30 p.m. on the same day. Learned counsel submits that the evidence of PW1 is thus, not trustworthy and he is not a reliable witness. Learned counsel submits that no specific role is attributed to the present revision applicant. Learned counsel submits that the prosecution has failed to establish that the present revision applicant has abused the complainant and uttered specific words so as to held him guilty of the offence punishable under Section 504 of IPC. Learned counsel submits that the prosecution witnesses are highly interested witnesses and their evidence, on close scrutiny, appears to be unreliable and untrustworthy. Learned counsel submits that the impugned judgment and order of conviction is, thus, liable to be quashed and set aside and the criminal revision applicant may be acquitted of the offences punishable under Sections 323 and 504 r/w 34 of IPC.

7. Learned counsel, in order to substantiate his contentions, placed reliance on the decisions in following cases:

1. Decision of Patna High Court dated 19th May, 2011 in the case of ***Mahendra Baitha vs. The State of Bihar and another [Criminal Appeal (SJ) No. 227 of 2010]***,
2. ***Nagorao Vishwanath Inge vs. State of Maharashtra,***

reported in 1978 Mh.L.J. 152,

3. ***Samadhan Baburao Khakare and others vs. The State of Maharashtra and others***, reported in **1996 (1) Bom.C.R. 1**,
4. ***Shamnsaheb M. Multtani vs. State of Karnataka***, reported in **2001 All MR (Cri) 997 (S.C.)**,
5. ***Mr. Shrinivas Guramkondu vs. The State of Goa***, reported in **2015 All MR (Cri) 1003**,
6. ***Mr. Alizar Pereira vs. The State of Goa***, reported in **2014 ALL MR (Cri) 1664** and
7. ***George Cyriac Maruthukunnel vs. The State of Maharashtra***, reported in **2015 ALL MR (Cri) 897**.

8. Learned APP submits that learned First Ad-hoc Additional Sessions Judge, Ahmednagar, after considering the entire evidence on record, has rightly found the present revision applicant guilty of the offences punishable under sections 323 and 504 r/w 34 of IPC, and instead of sentencing him to imprisonment, by taking a lenient view, has released him on admonition as per the provisions of Section 360(3) of Cr.P.C. Learned APP submits that all the accused persons, including the present revision applicant, in furtherance of their common intention, caused simple hurt to the complainant, who is a Police Constable, and abused him in filthy language. Learned APP further submits that, after the work of removal of encroachment

was over, the Government officials and the Police officials specially deputed there for the said task, went to the rest house for sharing a cup of tea and therefore, there is no question of the incident being witnessed by any independent witness. Learned APP further submits that evidence of witnesses, though interested, cannot be discarded mainly on that ground and their evidence requires a close scrutiny. Learned APP submits that there is no reason for the Government as well as Police officials to depose falsely against the accused persons including the criminal revision applicant. Learned APP submits that the charges are correctly framed and there is no illegality as such. Learned First Ad-hoc Additional Sessions Judge, Ahmednagar has rightly found the accused, including the revision applicant, guilty of the offences punishable under Sections 323 and 504 r/w 34 of IPC. Learned APP submits that learned First Ad-hoc Additional Sessions Judge has taken a very lenient view and released the revision applicant on admonition instead of sentencing him to imprisonment or fine. Learned APP submits that the impugned judgment and order calls for no interference. The Criminal Revision Application is devoid of any merits and the same is liable to be quashed and set aside.

9. So far as removal of encroachment over the Grampanchayat property of said village is concerned, that incident was over in the morning time. It is not the case of prosecution that PW1-Police

Constable Baban Makhare played a prominent role while removal of encroachment. Even PW1-Police Constable Baban Makhare has also admitted in his cross-examination that he had no cross terms with the accused persons. However, PW1-Police Constable Baban Makhare was knowing the accused persons prior to the date of incident as the workers of a political party. It is also not the case of prosecution that the accused persons were the leaders of said agitation and in that capacity, even after the incident of removal of encroachment was over, entered in the Government rest house and assaulted the Police officials sitting there. Even the prosecution case is silent as to whether the accused persons were having their properties in the alleged encroached area and since the encroachments were removed, they got annoyed. Thus, the edifice of the prosecution story appears to be doubtful.

10. So far as the incident which took place on 11.11.2001 at Government rest house at village Nannaj is concerned, PW1-Police Constable Baban Makhare (the complainant) deposed that all the accused rushed towards him and he fell down. He has ascribed certain roles to accused Nos. 2 to 4. He also felt that someone is beating on his legs and thighs. So far as the present revision applicant is concerned, according to the complainant-PW1 Baban Makhare, he had caught hold of the hands of complainant alongwith

accused No.2-Sudhakar, and they all started pressing his throat. He has deposed that accused No.3-Amol sat on his chest and started pressing his throat. As per the allegations, if the other accused persons caught hold of his hands, then it is practically impossible for all of them to press his neck jointly.

11. PW2-Laxman Moholkar, who is a panch witness, has deposed that the incident had taken place in a room of the Government rest house measuring 12 ft. X 10 ft. PW2-Laxman Moholkar (panch witness) has simply given a description of the room and the articles and furniture kept therein. He has not deposed that the articles and the furniture in the said room were in scattered condition. PW6-Arun Wamanrao Thakur, who is Tahsildar, has deposed that after removal of encroachment, alongwith Policemen, he went to the Government rest house to have a cup of tea and at that time, a mob consisting of 300 to 400 persons was present outside the Government rest house. He has further deposed that four to five persons had entered inside the rest house and they were workers of one political party. He could identify only the accused Nos. 1 and 2 present before the court. He has deposed that the said workers and one female worker had caught neck of P.S.I. and abused him. If a mob consisting of 300 to 400 persons was present near the rest house, as deposed by this witness, then it is difficult to believe that out of the said unruly mob,

only five persons entered in the Government rest house and assaulted the Police officials.

12. PW7-Police Constable Ravindra Chavan, PW9-Police Constable Salim Patel and PW10-Police Inspector Pandharinath Pachpute have actually witnessed the incident as deposed by them. On careful scrutiny of their evidence, I do not find that they have ascribed any definite role to the present revision applicant in the alleged incident.

13. According to PW1-Police Constable Baban Makhare, after the said incident in Government rest house was over, he went to Police Station, Jamkhed and lodged a complaint against the accused persons. The said complaint is marked at Exh.28. According to him, the Police Station Officer, after recording his complaint, had referred him with an Yadi to Rural Hospital, Jamkhed, where the medical officer had examined and treated him. On perusal of the complaint Exh.28, it appears that the complaint was recorded at 16.10 hours and accordingly, crime was registered. Even PW8-A.S.I. Shamrao Barde, who was Police Station Officer of Police Station, Jamkhed on 11.11.2001, has deposed that the complainant PW1-Police Constable Baban Makhare had come to Police Station at 3.30 p.m., and after recording his complaint, he had referred the complainant to

hospital with an Yadi. PW4-Dr. Sanjiv Mundhe, who has examined PW1-Police Constable Baban Makhare, has deposed that he had examined Police Constable Baban Makhare on 11.11.2001 at 3.30 p.m. The incident had taken place at village Nannaj, Taluka Jamkhed. After the alleged incident was over, PW1-Police Constable Baban Makhare went to Police Station, Jamkhed and he reached there at about 3.30 p.m. His complaint was recorded at about 4.10 p.m. and thereafter, as per the evidence of prosecution witnesses, he went to the Government Hospital alongwith an Yadi. Under these circumstances, it is not possible for the medical officer serving in the Government Hospital to examine PW1-Police Constable Baban Makhare at 3.30 p.m. in the hospital. Surprisingly, PW1-Police Constable Baban Makhare has not taken further treatment in the said hospital and as per his evidence, he had taken treatment from a private doctor. Even though certain injuries appeared on the neck of PW1-Police Constable Baban Makhare, as deposed by PW4-Dr. Sanjiv Mundhe, however, the entire circumstances, as pointed above, leading to his medical examination, are doubtful.

14. In the backdrop of above, learned Ad-hoc Additional Sessions Judge found the revision applicant guilty alongwith other accused persons for the offences punishable under Sections 323 and 504 r/w

34 of IPC. Though Sections 34 and 149 of IPC deal with cases of constructive criminal liability, however, there is clear distinction between the provisions of the said sections. Learned Ad-hoc Additional Sessions Judge found five accused guilty for the said offences and it is not that the accused persons could not have been convicted under Section 149 of IPC because their number falls below five. There are no reasons in the impugned judgment and order of conviction as to what led the trial court to convict the accused persons with the aid of Section 34 of IPC. Needless to say that 'object' is a different state of mind from 'intention' and though the object of the members of an unlawful assembly may be common, their intentions may differ. Common intention requires prior concert or meeting of minds, whereas, a common object may be found without that. In the case in hand, as per prosecution case, a mob consisting of 300 to 400 persons gathered in front of the Government rest house and out of that mob, four to five persons suddenly entered in the Government rest house and assaulted the Police officials. In view of these allegations, switching over to Section 34 of IPC by dropping Section 149, which is rather substantive offence, in my considered opinion, the same caused grave prejudice to the defence of the accused.

15. So far as the charges framed against the accused including the

revision applicant by learned Ad-hoc Additional Sessions Judge are concerned, it appears from the charges framed and leveled against them that the offences were not triable by the Court of Sessions. In the circumstances, learned Ad-hoc Additional Sessions Judge ought to have sent the case to the Chief Judicial Magistrate or to any other Magistrate competent to try that particular offence, as provided under Section 228(1)(a) of Cr.P.C. In view of the provisions of Section 26 of Cr.P.C., Sessions Judge has power to try any offence under the Indian Penal Code. It is not necessary for the Sessions Court that the offence should be one exclusively triable by the Court of Sessions. The Sessions Judge has to exercise his discretion regarding the case which he has to continue for trial in his Court and the case which he has to transfer to the Chief Judicial Magistrate as provided under Section 228(1)(a). One of the instances for not making such transfer is, when a case and a counter-case have been committed to the Sessions Court and one of those cases involves an offence exclusively triable by the Sessions Court and the other does not involve any such offence. In the case in hand, no such instances *prima facie* appears so as to justify the non-observance of provisions of Section 228(1)(a) of Cr.P.C.

16. In view of the above discussion, prosecution has failed to prove the case against the revision applicant-original accused No.4

beyond reasonable doubt. Furthermore, learned Ad-hoc Additional Sessions Judge found the present revision applicant-accused guilty of the offences punishable under Sections 323 and 504 r/w 34 of IPC when no specific charge is framed against the revision applicant in this regard, thereby caused prejudice to the defence of revision applicant - original accused No.4. Furthermore, learned Ad-hoc Additional Sessions Judge has committed grave mistake of law in not following the provisions of Section 228(1)(a) of Cr.P.C. In view of this, the revision applicant-original accused No.4 is entitled to be acquitted of the offences punishable under Sections 323 and 504 r/w 34 of IPC by setting aside the judgment and order of conviction recorded against him by learned First Ad-hoc Additional Sessions Judge, Ahmednagar. Hence, the following order :

O R D E R

- I. The Criminal Revision Application is hereby allowed.
- II. The judgment and order of conviction dated 30.08.2002 passed by learned First Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 05 of 2002, as against the revision applicant-original accused No.4 'Anand Sudhakar Salve' releasing him after giving admonition to him as provided under Section 360(3) of Cr.P.C. instead of sentencing him to imprisonment or fine for the offence punishable under Sections 323 and 504 r/w 34 of IPC, is hereby quashed and set aside.

- III. The revision applicant-original accused No.4 "Anand Sudhakar Salve" is hereby acquitted of the offences punishable under Sections 323 and 504 r/w 34 of IPC. Bail bond of the revision applicant-original accused No.4 stands cancelled.
- IV. Criminal Revision Application is accordingly disposed of. In view of disposal of Criminal Revision Application, pending Criminal Applications are also disposed of.

(V. K. JADHAV, J.)

...

vre/-