

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

Criminal Writ Petition No. 360 of 2004

District : Nanded

Charansingh s/o. Sohansingh Sandhu,
Age : 48 years,
Occupation : Business,
R/o. Shahidpura Gurudwara,
Nanded.

.. Petitioner.

versus

1. The State of Maharashtra,
Through P.S. Shivajinagar,
Nanded.
2. Jasbirsingh s/o. Kartarsingh
Bhatiya,
Age : 33 years,
Occupation : Agriculture and
Business,
R/o. Vishnupuri,
Taluka & District Nanded.

.. Respondents.

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*Mr. Abhay Ostwal, holding for
Mr. S.G. Karlekar, Advocate, for the petitioner.*

*Mr. P.N. Kutti, Addl. Public Prosecutor, for
respondent no.1.*

*Mr. S.S. Gangakhedkar, Advocate, for respondent
no.2.*

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CORAM : Z.A. HAQ, J.

DATE : 30TH NOVEMBER 2016

ORAL JUDGMENT :

Heard the learned Advocates for the respective parties.

02. The order passed by the learned Addl. Sessions Judge allowing the Revision Application filed by the respondent no.02 under Section 397 of the Code of Criminal Procedure, 1973, is allowed and the matter is remitted to the Court of Chief Judicial Magistrate for deciding application (Exhibit No.42) first before proceeding further, is challenged.

03. The respondent no.02 had filed complaint praying that the present petitioner is liable to be prosecuted and convicted for the offence punishable under Sections 392, 420 read with Section 34 of Indian Penal Code. The learned Chief Judicial Magistrate dismissed the complaint and acquitted the accused. The respondent no.02 had filed Revision Application which is allowed by the impugned judgment.

04. The submission on behalf of the petitioner is that the judgment passed by the Chief Judicial Magistrate was required to be challenged before this Court after obtaining leave as per Sub-Section 4 of Section 378 of the Code of Criminal Procedure, 1973, and the Sessions Court could not have exercised

jurisdiction under Section 397 of the Code of Criminal Procedure, 1973. To substantiate the argument, the learned Advocate for the petitioner has relied upon the provisions of Sub-Section 4 of Section 401 of the Code of Criminal Procedure, 1973 and the judgments given by this Court in the following cases :-

[1] ***Dharamaji Gangaram Gholam & others
Vs. Vithoba Soma Khade & another
(1992(1) Mh.L.J. 118).***

[2] ***Gajanan Parshuram Chopade
Vs. Mahatma Jyotirao Phule Gramin
Bigarsheti Sahakari Patsanstha
Maryadit, Barloni
(2009(1) Mh.L.J. 845).***

05. The learned Advocate for the respondent no.02 and the learned Addl. Public Prosecutor have not been able to controvert the submission made by the learned Advocate for the petitioner.

06. Considering the provisions of Section 401(4) of the Code of Criminal Procedure, 1973 and the proposition laid down in the above referred judgments, it has to be held that the Revision Application filed by the respondent no.02 before Sessions Court was not maintainable. Consequently, the impugned judgment is unsustainable.

Hence, the following order :-

(a) The judgment passed by the 2nd Ad hoc Addl. Sessions Judge, Nanded, in Criminal Revision No. 54/2003 on 24th February, 2004 is set aside, and the Revision Application is dismissed.

(b) Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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