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

CRIMINAL REVISION APPLICATION NO.419 OF 2003

Bhagwat Vitthal Barhate,
Age: 34 years, Occ: Driver,
R/o. Nandurghat, Tq. Kej,
District Beed. ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr Ruchir Wani, Advocate h/f Mr A.S. Bajaj,
Advocate for applicant;
Mr C.V. Dharurkar, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 26th SEPTEMBER, 2016

ORAL JUDGMENT :

This revision is by original accused, who was convicted by learned Judicial Magistrate, First Class, Pathardi in Summary Criminal Case No. 132 of 2000 for an offence punishable under Sections 279, 337, 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, which was partly modified in Criminal Appeal No. 28 of 2003 by setting aside the conviction for an offence

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punishable under Section 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act. As such, present criminal revision application.

2. Heard learned Counsel for the applicant. Learned Counsel for the applicant submits that the spot panchnama ought not to have been taken to be proved once it is brought to the notice of the Court that panch witnesses were not examined. According to him, the Court has proceeded contrary to the provisions of Sections 67 and 69 of the Evidence Act. He would then submit that the evidence of PW-4 Padmabai, who turned hostile was incorrectly discarded though she has in categorical terms stated that PW-1 was driving jeep in rash and negligent manner, which was the cause of accident in the present case. He would then take me through the scenario of the accident so as to substantiate his case that the applicant is wrongly convicted for the offence in question.

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3. While opposing the claim, learned A.P.P. submits that learned Sessions Judge has rightly modified the punishment and the fact remains that the conviction of the applicant for an offence punishable under Section 279, 337 of the Indian Penal Code is based on oral evidence. According to him, there is no scope of interference in revisional jurisdiction and revision, as such, is liable to be dismissed.

4. The facts as are necessary for deciding the revision are as under :-

PW-1 Avinash @ Pravin was driving the jeep bearing registration No. MH-16-E-1892 from Tisgaon to Tribhuwanwadi on 28th February, 2000, which was from east to west direction. It is claimed that on the south side of the road, milk tanker bearing registration No. MH-12-R-9896 was suddenly brought on road by the accused, as such, tanker gave dash to the jeep in question from cleaner side i.e. other side of driver causing accident in question.

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5. PW-5 Investigating Officer, who has drawn spot panchnama during the investigation, which is at Exhibit-37, was duly proved the same. From the spot panchnama, it appears that at the place of accident, width of road was 18 feet and in addition, there was 5 feet kaccha road on each side. It is then brought on record that milk dairy from which tanker was driven by the applicant was located on southern side at distance of about 10 feet to 15 feet from main road. From southern side tanker was brought on main road resulting into accident. After the accident, it was noted that tanker in question was found to be at the distance of 24 feet from the spot of accident facing towards eastern side.

6. PW-1 Pravin has stated that on the date of incident, he was driving the jeep and it is the tanker in question, who has caused the accident, which has given dash to his vehicle. PW-2 Shrawan and PW-3 Leelabai supported the case of the prosecution, who has occupied front seat of the

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jeep and were sitting next to PW-1 who was driving same. They have in categorical terms stated that tanker was driven in rash and negligent manner, which suddenly came on road resulting into accident. PW-4 Padmabai has not supported her statement recorded under Section 161 of the Code of Criminal Procedure and was turned hostile. According to her, it is the jeep driver who has caused the accident in question. PW-5 the Investigating Officer has duly proved spot panchnama. The injury certificate is regarding injury suffered by PW-1 and 2 was very much brought on record. Learned Magistrate, pursuant to the analysis of testimony, has inferred that the offence as has been charged was duly proved against the accused and sentenced him to suffer simple imprisonment for one month and to pay fine of Rs.500/-, in default to suffer simple imprisonment for 15 days for offence punishable under Section 279 of the Indian Penal Code, to suffer simple imprisonment for one month and to pay fine of Rs.500/-, in default to suffer simple imprisonment

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for 15 days for offence punishable under Section 337 of the Indian Penal Code and also sentenced him to suffer simple imprisonment till rising of the Court and to pay fine of Rs.500/-, in default to suffer simple imprisonment for seven days for the offence punishable under Section 427 of the Indian Penal Code and sentenced to suffer simple imprisonment for one month for the offence punishable under Sections 184 of the Motor Vehicles Act.

7. The appellate Court noted that the offence under Section 184 of the Motor Vehicles Act and under Section 427 of the Indian Penal Code was not proved. While giving such observations, learned appellate Court noted that it is not brought on record by the prosecution that the vehicle was driven dangerously. The appellate Court confirmed the conviction under Section 279 and 337 of the Indian Penal Code.

8. Perusal of both the judgments in the light

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of submissions made reflect that the conviction of the applicant-accused as is ordered by learned Sessions Judge needs to be confirmed, particularly in the light of oral evidence of victims of the accused i.e. PW-1, 2 and 3. The spot panchnama at Exhibit-37 has been rightly proved by the PW-5 Investigating Officer. If the topography of the incident in question is analyzed based on Exhibit-37, learned Magistrate and learned appellate Court have rightly observed that the applicant is responsible for the accident in question.

9. The contention of the applicant that the spot panchnama was not duly proved, in the light of evidence of P.W.5 – Investigating Officer is liable to be rejected.

10. No case for interference in the revisional jurisdiction is made out. As such revision fails and stands rejected.

(N.W. SAMBRE, J.)