

(1)

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

**CRIMINAL REVISION APPLICATION NO.186 OF 2016
WITH
CRIMINAL APPLICATION NO.4492 OF 2016**

1. Bharat s/o Doharya Pawara,
Age: 41 years, Occ: Labourer,
R/o. Achapa, Tq. Akrani,
Dist. Nandurbar.
2. Dipak s/o fofarya Pawara,
Age: 35 years, Occ: Labourer,
R/o. Palkha, Tq. Akrani,
Dist. Nandurbar. ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr H.V. Tungar, Advocate h/f Mr. C.R. Deshpande,
Advocate for applicants;
Mr K.D. Mundhe, A.P.P. for respondent;

CORAM : N.W. SAMBRE, J.

DATE : 22nd August, 2016

ORDER :

With the consent of the parties, heard
finally.

2. Present applicants were convicted by
learned Judicial Magistrate, First Class, Dhadgaon,

(2)

in Regular Criminal Case No. 12 of 2000, for the offence punishable under Section 353 read with Section 34 of the Indian Penal Code, on 15th December, 2010, and sentenced to suffer simple imprisonment for period of six months and fine of Rs.1000/- each, in default to payment of fine, to suffer simple imprisonment for one month. The said conviction is confirmed in appeal by learned Sessions Judge, Shahada vide judgment and order dated 29th July, 2016. As such, present criminal revision application.

3. The prosecution story as appears against the present applicants that the applicants assaulted the complainant and other staff of the police party, who were trying to execute the prohibitory order in N.C.R. No. 11 of 2000, resulted into registration of Crime No. 6 of 2000 for the offence punishable under Sections 189, 332, 353 read with Section 34 of the Indian Penal Code. Pursuant to the order passed by learned Magistrate, the charge sheet came to be filed against the

(3)

present applicants and charge came to be framed at Exhibit-25, for the offence punishable under Sections 353, 332 read with Section 34 of the Indian Penal Code.

4. The prosecution, in support of its case, examined PW-1 Jirya at Exhibit-28, complainant PW-2 ASI Abasaheb Deshmukh at Exhibit-33, PW-3 Police Constable Chandrakant, eye witness, at Exhibit-40, PW-4 P.C. Ravindra, eye witness at Exhibit-41, PW-5 Dilavarsing at Exh-43 and PW-6 Udaysing, who happens to be father of PW-5 at Exhibit-44. PW-1, PW-5 and PW-6 have turned hostile, as such, they were subjected to cross examination by learned A.P.P.

5. Taking cumulative effect of the statement of eye witnesses, learned Magistrate proceeded to record the conviction, which was confirmed in appeal, as such, present revision application.

(4)

6. Heard Mr. Tungar, learned Counsel for the applicants, has tried to pursue this Court so as to make out a case for acquittal. Amongst other ground that was tried to be relied upon the present applicants is that there is no independent testimony of the witnesses but for the testimony of police personnel so as to infer that the offence in question ought not to have been considered to be proved against the applicants. Mr. Tungar, learned Counsel for the applicants would then took me through the deposition of witnesses so as to prevail upon this Court to infer the case for acquittal.

7. Learned A.P.P. supported the judgments of learned Magistrate and Sessions Judge.

8. Having bestowed my thought to the submissions made, it is to be noted that eye witnesses to the incident Police Constable Chandrakant, other witness ASI Deshmukh, and police constable Ravindra have deposed in support of the

(5)

prosecution case. Their evidence as was considered in analytical manner by learned Magistrate and Sessions Judge, takes this Court to the only conclusion that the applicants herein have committed an offence punishable under Section 353 read with Section 34 of the Indian Penal Code.

9. The necessary ingredients of the said Section particularly in the background of evidence as is sought to be brought on record by PW Nos. 2, 3 and 4 speaks voluminous about involvement of the applicants in the crime in question, as such, on merits, no interference is called for.

10. At this stage, Mr Tungar, learned Counsel for the applicants would urge that having regard to the fact that the incident in question is of 2000 and the applicants have suffered for last 16 years, the benefit of provisions of Section 360 of the Probation of Offenders Act be extended to the applicants as they are convicted for the offence punishable under Section 353 of the Indian Penal

(6)

Code and punishment imposed is of only six months. According to him, in the intervening period, there are no such allegations of commission of crime against them.

11. If above referred submission of the applicants is considered, it is required to be noted that the applicants have faced prosecution for almost last 16 years. Apart from above, the fact remains that they are convicted for a period of six months for offence punishable under Section 353 read with Section 34 of the Indian Penal Code and have already paid fine amount. Apart from above incident, it is brought to my notice that there are no other criminal antecedents.

12. In my opinion, for the reasons stated and having regard to the conduct of the applicants, the applicants deserves to be extended benefit under Section 360 of the Probation of Offenders Act. As such, the following order :

(7)

(a) The applicants shall be released on probation and shall execute a bond of good behavior, with one surety before the concerned Probation Officer for the period of one year, within a period of four weeks from today.

(b) The applicants shall not indulge into similar type of offences within probation period. Default, if any, the Probation Officer shall forthwith report the matter to the learned Magistrate, who shall at liberty to take immediately the custody of the applicants and file appropriate report to this Court for further orders as regards probation.

13. With the above observations, Criminal Revision Application and Criminal Application stand disposed of.

(N.W. SAMBRE, J.)