

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 4 OF 2016

MR. CHANDRAKANT DESAI, PRESENTLY
LODGED AT SUB JAIL SADA, VASCO GOA ... Petitioner
Versus
STATE OF GOA, THROUGH SMT. MARIA
R.E.D'SOUZA, POLICE INSPECTOR AND
ANR., ... Respondents

Mr. Salil Satish Saudagar, Advocate for the Applicant.

Mr. M. Amonkar, Addl. Public Prosecutor for the Respondents.

Coram:- S. B. SHUKRE, J.
Date:- 15th February, 2016.

Oral Judgment:

Heard. Admit. Heard finally by consent.

2. Learned counsel for the revision applicant has assailed the impugned judgment and order on two grounds (a) the investigation could not have been carried out without sanction of the concerned magistrate as the offence punishable under section 185 of the Motor Vehicles Act is non cognizable and (b) secondly, no reliance could have been placed upon the breathe test report, the same being not admissible in evidence.

3. Learned Addl. Public Prosecutor for the State has opposed the application submitting that both these challenges have been extensively dealt with by the learned Magistrate in the impugned order and neither any illegality and/or incorrectness and/or impropriety could be found in impugned order and therefore, this is not a fit case for interfering with the impugned judgment and order.

4. On going through the impugned judgment and order, I find substance in the argument of the learned Addl. Public Prosecutor for the State and no merit in the argument of the learned counsel for the revision applicant.

5. The learned Judicial Magistrate, by relying upon the case of **Dharampal Vs. State of UP, 2006 (2) ALL LJ 94**, has found that no prejudice has been caused to the defence of the applicant/accused or no miscarriages of justice has occurred in this case by police investigating the offence without obtaining permission from the Magistrate and therefore, this would not be a case falling under the categories listed in Section 461 Cr.P.C.

6. Upon consideration of the case in its entirety, I could not find any illegality or perversity in finding recorded in the order of learned Sessions Judge with regard to investigating the case without magistrate's permission, as no prejudice has been caused thereby to the applicant/accused.

7. As regards the admissibility of the breathe test report under section 202 of the M.V. Act also, I am of the view that since the offence was committed in the presence of the police officer, the learned Magistrate has rightly found the breathe test report as admissible in evidence.

8. The next contention of the learned counsel for the applicant is that the applicant is a man having his roots in the society and he has a family of three members to support. He submits that the applicant's wife is presently in advanced stage of pregnancy and she along with their one child, a son, are suffering a lot of difficulty and also misery in the absence of the applicant in their home. He also submits that this is the applicant's first offence and therefore, while sentencing the applicant, leniency ought to have been shown.

9. Learned Addl. Public Prosecutor submits that appropriate order may be passed.

10. Having regard to the submissions of the learned counsel for the applicant and also to the fact that there is no material on record to enable me to reject these contentions, I am of the view that this is a fit case in which leniency ought to have been shown. Therefore, I find that if the sentence is modified by reducing the term of simple imprisonment which is of one month to period of detention already undergone by the applicant till the date, which is of three days, it shall meet the ends of justice. Accordingly the following order is passed:

i) The revision application is partly allowed. The impugned orders dated 22/7/15 passed by the JMFC at Pernem in Criminal Case No.12/AOA/2013 and the order dated 12/2/2016 passed by the Addl. Sessions Judge, Mapusa in Criminal Appeal No.131/2015 are hereby partly quashed and set aside and now, the sentence of imprisonment handed out to the applicant/accused by this Court shall stand modified and be read as the sentence of imprisonment for a term restricted only to

period of detention already undergone by the applicant/accused and thus the applicant/accused shall now be released forthwith by the jail authorities of Sub Jail, Sada, Vasco-da-Gama.

ii) The impugned orders in so far as they relate to imposition of fine of Rs.2000/- upon the applicant/accused are confirmed, with a modification that the applicant/accused shall deposit the fine amount in the Trial Court within three days from the date of the order.

iii) The impugned orders to the extent they direct suspension of driving licence of the revision applicant are also modified and now it is directed that the driving licence of the applicant/accused shall be kept in suspension for a period of only seven months from 27/7/2015, which period shall expire on 26/2/2016. Thereafter, the driving licence of the applicant/accused shall stand renewed and shall be returned to him.

11) Revision application is disposed of in these terms.

S. B. SHUKRE, J.

Ap/-