

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.387 OF 2016

Milind Ratalal Sonagra .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.H.P.Vyas, Advocate, for the Applicant
Mr.A.S.Shitole, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 12.07.2016

P.C.

. Heard learned counsel for the Applicant
and the learned APP for the Respondent – State.

2. Rule. Rule is made returnable,
forthwith.

3. By this Application, the Applicant has
impugned the Judgment and Order dated 11.04.2016
passed by the learned Additional Sessions Judge,
Greater Mumbai, partly allowing the Appeal by
setting aside the Judgment and Order dated

23.07.2015 passed by the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai in C.C.1009/P/1992, convicting the Appellant/Accused for an offence punishable under Section 324 of the Indian Penal Code and directing the Lower Court to restore the said proceedings, being C.C.No.1009/P/1992 to its file and to decide the case afresh after giving an opportunity to the Complainant for participation through the Public Prosecutor in final arguments. Liberty was also granted to both the sides to lead additional evidence or to rely upon earlier evidence and then to argue afresh.

4. Learned counsel for the Applicant submits that the impugned Judgment and Order dated 11.04.2016 passed by the learned Additional Sessions Judge was uncalled for considering the facts & circumstances of the case. He submitted that there was no occasion for the learned Judge to come to the said

conclusion. According to the learned counsel, by the said order, the prosecution, who was given ample opportunity to adduce the evidence, which it did, has again been given liberty to lead additional evidence, as a result of which the prosecution is given an opportunity to fill up the lacuna. He submitted that the evidence of the witnesses was recorded in detail in the trial Court and that all the witnesses, who were material to the said case were examined and therefore, it cannot be said that the prosecution was not given an opportunity to put forth the evidence. He submits that in fact, the Complainant was also heard at the stage of final arguments by the trial Court. He further submitted that the learned Judge has erred in holding that the Lower Court had not marshaled the evidence properly. According to him, the said order was not justified and as such, prayed for quashing & setting aside of the said order.

5. Learned APP submits that it appears that the learned Sessions Judge has remitted the matter back to the trial Court, on the premise that the trial Court had not properly appreciated and marshaled the evidence on record, both, oral as well as documentary. He does not dispute the fact, that the prosecution was given ample opportunity to lead evidence, which infact it did, by examining the Complainant, eye witnesses and the concerned Doctors.

6. Perused the papers. It appears that the incident in question has taken place on 26.03.1992. Thereafter, after investigation, charge-sheet was filed and the accused was charged for the offence punishable under Section 326 of the Indian Penal Code. Thereafter, between 2012 to 2014, evidence was led by the prosecution, and as many as, seven witnesses were examined by the prosecution, including,

PW-4 Dr.Jayant Anant Khandare & PW-5 Dr. Ramesh Motiram Punjani, who treated the Complainant. Considering the evidence on record, the trial Court convicted the Applicant for the offence punishable under Section 324 of the Indian Penal Code and sentenced the Applicant-Accused to suffer imprisonment for one year. Against the said Judgment and Order of conviction and sentence, the Applicant preferred an Appeal in the Sessions Court, being Cri.Appeal No.707 of 2015. It appears, that when the Appellant was heard, the learned Sessions Judge was of the opinion and as is recorded in para 32 of the impugned order, that the trial Court had not properly marshaled and appreciated the evidence on record and had failed to consider the relevant provisions of law properly and after considering the same, remitted the matter back to the trial Court. Vide the impugned order, the learned Judge had not only remitted the matter back to the trial Court, but had also directed

the trial Court to decide the case afresh, after giving an opportunity to the Complainant to participate through the Public Prosecutor in the final arguments. Liberty was also granted to both the sides to lead additional evidence or to rely upon earlier evidence and then to argue afresh.

7. It appears from the record that the prosecution had examined all the material witnesses and has brought on record its case. It also appears that neither the Complainant nor the prosecution had preferred an Application nor made any grievance to the effect, that no opportunity was granted to them to lead the evidence or had prayed for remitting of the matter back to the trial Court. It also appears from the proceedings that the trial Court had given ample opportunity to the prosecution to examine its witnesses and lead evidence and in the light of the same, the learned Judge was not

justified in remitting the matter back to the trial Court for leading additional evidence. By the impugned order, the prosecution has been given an opportunity to fill in the lacuna, which is impermissible. The incident is of 1992 and the trial commenced sometime in 2011. In the facts of this case, there was no justification for the learned Sessions Judge to remit the matter back and permit the parties to lead additional evidence.

8. Considering the same, the impugned Judgment and Order dated 11.04.2016 passed by the learned Additional Sessions Judge, Greater Mumbai is quashed & set aside and the Cri.Appeal No.707 of 2015 is restored to its original file. The learned Judge shall decide the said Appeal on its own merits uninfluenced by the observations made in this order.

9. Accordingly, the Application is

allowed. Rule is made absolute in the aforesaid terms.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)