

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.1265 OF 2016

IN

CRIMINAL APPEAL NO.678 OF 2016

Mr. Pandurang Mansingh Gunjawate ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr. A.P.Mundargi , Senior Advocate with Mr. Abhijit B. Kadam and Mr. Ganesh Bhujbal, Advocates for the Applicant.

Mr. P.H.Gaikwad Patil, APP for the Respondent/State.

Mr. Pavan S. Patil, Advocate for Intervenor.

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CORAM : P. N. DESHMUKH J.

DATED : OCTOBER 26, 2016.

P.C.

1 This application is filed for suspension of conviction imposed upon applicant by the learned Additional Sessions Judge, Satara in Special Case NO.16/2014. Heard learned counsel for applicant, learned APP and learned counsel for intervenor/original complainant.

2 At the outset, it is submitted that this application is required to be filed as applicant who is councillor of Municipal Council of Phaltan is intending to contest elections of said municipal council for the post of councilor which are scheduled to held in the month of November, 2016 and for that purpose, process of filing nomination form

is in progress and the forms are to be filled on or before 29.10.2016.

3 The learned Senior Counsel for applicant has submitted that though applicant was prosecuted for the offence punishable under Sections 354B, 341, 353 and 506 of IPC and under Sections 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1981 (In short 'SC ST Act') and under Section 7(1)(d) of the Protection of Civil Rights Act, applicant is acquitted of all the offences except for the offence punishable under Section 354B of IPC for which he he is sentenced to suffer RI for three years and to pay fine of Rs.5,000/- in default to suffer RI for three months. Accused/applicant is further convicted for the offence punishable under Section 341 of IPC and is sentenced to suffer SI till rising of Court. It is submitted that in view of conviction imposed upon applicant for the offence punishable under Section 354B of IPC for a period extending two years, applicant is disqualified from contesting forthcoming elections and has thus submitted that application be allowed by suspending conviction imposed upon applicant so that he can participate in the election process. In that view of matter, learned Senior Counsel for applicant had relied upon provisions of Section 354B of IPC and by referring to the contents therein, had contended that from the evidence on record, no ingredients of above said penal provision can said to be established. To substantiate said submission, learned counsel for applicant had referred to the evidence of P.W.4-Complainant, D.W.1-Mr. Yeshwant Bhimrao Dange, who was then Chief Officer of concerned Municipal Council, and of P.W.8-Dr. Anshuman Dattajirao Dhumal and had contended that from the evidence of these witnesses, no ingredients of

Section 354B are proved. It is also contended that in fact complainant appears to have exaggerated her version and by referring to evidence of Dr. it is submitted that same does not corroborate oral version of complainant.

4 With reference to evidence of D.W. Dange, it is submitted that prosecution deliberately did not examine said witness in spite of he being shown as prosecution witness in the charge-sheet who is examined as defence witness whose evidence is sufficient to falsify case of prosecution. With regard to other witnesses being P.W.6-Vishwas Bapurao Pawar and P.W.7-Sau. Nayana Ashokrao Bhagat who is husband and sister of complainant respectively, are interested witnesses and thus they are bound to support the case of complainant. Learned Senior Counsel for applicant has also referred to observations of this Court while granting anticipatory bail to applicant and has relied upon case of **Ravikant S. Patil v. Sarvabhuma S. Bagali** reported in **(2007) 1 Supreme Court Cases 673**, which case is also relied by the learned counsel for intervenor.

5 The learned APP opposed the application on the line of affidavit-in-reply on record and has contended that from the evidence of witnesses, prosecution has clearly established ingredients of Section 354B of IPC and in that view of matter, had submitted that application be rejected.

Similar are the submissions of the learned counsel for intervenor. He has further added that evidence of defence witness needs to be kept aside in view of the fact of applicant being councilor and DW 1-

Yeshwant Bhimrao Dange, who at the material time was posted as Chief Officer is bound to speak in favour of applicant. It is, therefore, submitted that his evidence be kept out of consideration. It is thus contended that application be rejected.

6 The Hon'ble Apex Court in the case of **Ravikant S. Patil (Supra)** had cautioned the Courts while considering applications for stay of conviction thereby stating that power to stay conviction should be exercised in exceptional and rare circumstances and in its paragraph 15 has observed thus:

“15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. In so far as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction.”

7 In the background of submissions advanced for applicant, I have considered evidence on record together with provisions of Section 354B of IPC which is reproduced below:

“354B. Assault or use of criminal force to woman with intent to disrobe-

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

8 From the above provision, it is noted that to attract the same, there has to be intention to commit an act of disrobing or compelling woman to be naked or one has to abet commission of such act. In the light of requirement as above, evidence of complainant is that on 5.3.2014 when she was in her office along with others, in her capacity as project officer in Phaltan Nagar Parishad at 12.15 p.m. applicant arrived and started abusing her on caste basis. Said evidence, however, does not require any consideration, so far as present application is concerned, in view of the fact that applicant is acquitted of the offence punishable under Section 3(1)(x) of the SC ST Act.

Further evidence of complainant is that applicant thereafter went towards cabin of Chief Officer to whom she also followed to narrate the incident and found applicant sitting on chair next to Chief

Officer and after complainant entered the office, applicant informed Chief Officer that this lady should be sent out of job and should be sent to her home upon which Chief Officer called for confidential reports of complainant and has never listened to her. Complainant has further stated that she thus made complaint with P.W.Vishwas Bapurao Pawar Vice-President of Caste Tribes Karmachari Mahasangha who informed her that she should not take such incident seriously and he would inform this fact to Chief Officer and went to the office of Chief Officer to whom complainant accompanied.

9 On the point of incident, she has stated that in the cabin applicant by pulling her saree pushed her on the door due to which she sustained injury to her right eye and then caught her hairs and dragged her and caught hold of her right shoulder due to which her blouse got torned. It is to be noted that this evidence needs consideration with reference to offence under Section 354B of IPC for which applicant is convicted. On perusal of cross-examination, complainant appears to have materially improved her version when she has stated that she is unable to assign any reason why there is no mention of these facts in her statement. Entire evidence of complainant appears to be by way of omissions which are brought on record. Admittedly, neither of ladies who are stated to be present at the time of incident are examined. Paragraph 18 of complainant's cross-examination reveals that she has materially improved her case when she claims to have stated to police that after her entering in the cabin of Chief Officer, accused closed door and after abusing her pushed her on the door due to which she sustained injury to her right eye and then dragged her by pulling her

saree and as she was caught hold by applicant at her right shoulder, her blouse was torn. However, all these facts do not find place in her statement for which she is unable to state any reason as to why no such facts are mentioned in her statement. In that view of matter, complainant's evidence appears to be full of material omissions which directly goes to the root of case.

10 Apart from non-examination of females, who according to the complainant were present at the scene of offence, prosecution has not even examined Yashwant Bhimrao Dange the then Chief Officer of Municipal Council, Phaltan who was thus, examined as defence witness no.1. On perusal of his evidence, it is revealed that on the date of incident when he was in cabin along with applicant one unknown person who is P.W. Vishwas Pawar, husband of complainant, came in the cabin with her and informed Chief Officer that applicant was in the habit of making false complaints against complainant and told D.W.1-Dange to remove him from office. At that time, complainant took out her chappal and raised on applicant when one Anoop Shah intervened. However, complainant again took out another chappal and raised on applicant when Chief Officer intervened and removed the chappal from the hands of complainant. Evidence of this witness thus, do not establish any case against applicant for which he came to be convicted. Similarly, Anoop Shah is not examined. No explanation is put forth by prosecution for non-examination of such material witness.

11 Moreover, in the light of evidence of complainant of her sustaining injury to her eye due to push alleged to have been given by applicant to her at the door when evidence of P.W.8-Dr. Anshuman Dhumal Medical Officer attached to Rural Hospital, Phaltan is perused,

it reveals that when he examined complainant on the date of incident , he did not notice any reasonable external injury on her person. Above evidence thus, create doubt in the version of complainant as deposed by her.

12 Having considered evidence as discussed above and as record reveals that this Court while considering anticipatory bail application of applicant being Criminal Bail Application No.358 of 2014 has considered all material documents and has noted that to attract provisions of 354B of IPC, prima-facie, it is necessary to see if there was an intent to commit sexual attack and held that offence found to have been attracted in the set of given circumstances is of physical fight which had taken place at the time of incident and not against womanhood and thus noting observations as aforesaid allowed the application since it was also found that there was rivalry between two political groups. In view of above discussed evidence and reasons, application is liable to be allowed in terms of prayer clause (a) of the same. Application is thus allowed.

Parties to act upon a copy of this order duly authenticated by the Sheristedar of this Court.

(P. N. DESHMUKH J.)