

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.595 OF 2016

IN

CRIMINAL REVISION APPLICATION NO.593 OF 2016

SHEKHAR BABAJI SAWANT

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Niranjan Mundargi i/b. Mr.Prasanna Bhangale, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 25th OCTOBER 2016.

P.C. :

1 Issue notice to respondent. Learned APP accepts notice on behalf of respondent – State.

2 Heard. Learned counsel for applicant has tendered on record copy of evidence of complainant. Same is supplied to learned APP and has submitted that evidence relied by the learned trial court as well as learned appellate court is not convincing. In spite of that, applicant came to be convicted for the offence punishable under

Section 294, 509, 323, 504 and 506 of IPC. Learned counsel for applicant by inviting attention to documents filed in support of the application has submitted that there is no sufficient evidence establishing conviction of applicant for above offences and has contended that, as the maximum punishment imposed upon applicant for the offence punishable under Section 509, 323 and 504 of IPC is for 1 year, application be allowed, as applicant was on bail pending trial and his sentence was also suspended by the learned appellate court.

3 Learned APP on the other hand opposed the application contending that evidence of complainant is fully corroborated with the evidence of PW2 and PW3 – eye witness and medical evidence of Dr.Prasannakumar Deshmukh. She has thus contended that application be rejected.

4 In the light of submissions advanced as aforesaid, applicant is found convicted for the offences punishable under Section 294 of IPC and is sentenced to suffer simple imprisonment for 3 months and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for 5 days, for the offence punishable under Section 509 of IPC and is sentenced to suffer rigorous imprisonment for 1 year and to pay a fine

of Rs.2,000/-, in default, to suffer simple imprisonment for 15 days, for the offence punishable under Section 323 of IPC and is sentenced to suffer simple imprisonment for 1 year and to pay Rs.1,000/-, in default, to suffer simple imprisonment for 15 days, for the offence punishable under Section 504 of IPC and is sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for 15 days, and for the offence punishable under Section 506 of IPC and is sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for 15 days. All the sentences are directed to run concurrently. Appeal preferred against above judgment and order is partly allowed by learned Sessions court, thereby setting aside order of sentence passed by the learned trial court for the offences punishable under Section 294 of IPC. However, has confirmed judgment with regard to punishment imposed for the offences punishable under Sections 509, 323, 504 and 506 of IPC.

5 From the Station Diary Entry dated 5th May 2011, recorded at Thane Nagar Police Station, it is found that some incident took place between complainant and applicant on that day, at about 5.30 p.m., wherein, complainant has stated that applicant had visited the place of

work of complainant and has informed superior officers working there that complainant does not have good character, she is not serious in her work, she avoids work assigned to her etc. Said information was kept pending for inquiry. It is further found that about more than one month thereafter, on 14th June 2011, complainant lodged her report with Thane Nagar Police Station, on the basis of which crime came to be registered for the offences punishable under Sections 294, 323 and 506 of IPC against the applicant.

6 On perusal of evidence of complainant, copy of which is tendered at the bar, it is found that it refers to some incident of applicant manhandling complainant and about giving kick blows in the abdomen of complainant in the presence of PW2 Balkrishna Jadhav and PW3 Neelam Borade. It is material to point out that no such facts are mentioned in the station diary entry referred as aforesaid. Even otherwise, no explanation is put forth for lodging delayed report on 14th June 2011 in respect of incident dated 5th May 2011. Similarly, there is nothing on record with regard to investigation, if any, carried out by police, of station diary entry dated 5th May 2011, till complainant lodged report on 14th June 2011, except for complainant writing letter to Commissioner of Police before her lodging report.

Though PW2 Balkrishna Jadhav and PW3 Neelam, are corroborating evidence of complainant, Neelam appears to have materially improved her version involving applicant, to have given kick blows in her abdomen, and about his manhandling her, as said witness, though claims to have stated as such in the statement recorded by the police, is unable to assign any reason as to why no such fact is mentioned in her statement.

7 Prima facie, it is found that prosecution has not examined Investigating Officer who has recorded statement of Neelam nor any attempt was made on behalf of applicant to examine said Investigating Officer to prove omissions from her evidence. In that view of the matter, such omissions cannot be considered as not proved. However, this aspect can be taken care of while hearing revision application on merits. On considering evidence of Dr.Prasanna, as it is found that there is overwriting in the medical certificate Exhibit 17, which aspect is not disputed by this witness, then, there is room to doubt if complainant was examined on 5th May 2011, as set out by prosecution. Learned counsel for applicant by referring to overwriting on the injury certificate has attempted to establish that overwriting clearly establish change of date from 5th June 2011 to 5th May 2011.

8 Having considered above discussed evidence, facts of case and since applicant is sentenced to suffer short sentence of 1 year as aforesaid, and was on bail pending trial, whose sentence was suspended by the appellate court till the appeal period, application is allowed as per order below :

- i) Applicant shall be released on bail on his executing PR.Bond in the sum of Rs.25,000/- with one surety in like amount.
- ii) While on bail, applicant shall mark his presence with Thane Nagar Police Station, once in three months, pending revision.
- iii) Applicant shall submit proof of his residence to the Investigating Officer, and change in address, if any, in future, to the concerned Police Station.
- iv) Parties to act on a copy of this order duly authenticated by the Sheristedar of this court.

(P N. DESHMUKH, J.)