

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.5 OF 2015

Satyawan Vitthal Khandekar
Age: 53 Yrs., occu. Service,
R/o Phulenagar, Bhokar,
Tq. Bhokar, Dist.Nanded. = **APPLICANT**

VERSUS

The State of Maharashtra
Through Bhokar Police Station,
Bhokar, Dist. Nanded. = **RESPONDENT**

Ms.A.N.Ansari, Advocate for Applicant;
Mr.AN Phule,APP for Respondent

CORAM : P.R.BORA, J.

DATE : 3rd November, 2017.

ORAL JUDGMENT:

1) Heard learned Counsel appearing for applicant and learned APP appearing for Respondent-State.

2) The applicant has filed the present criminal revision application taking exception to the judgment and order passed by the Additional Sessions Judge, Bhokar in Criminal Appeal No. 3/2012 decided on 19th December, 2014.

3) The applicant was initially prosecuted in the Court of Additional Chief Judicial Magistrate, Bhokar, vide Regular Criminal Case No.58 of 2010 for the offences punishable under Sections 294, 332, 336 and 353 of Indian Penal Code. The learned Magistrate held the applicant guilty for the offence punishable under Sections 332 and 353 of IPC and sentenced him to suffer R.I. for two years for the offence punishable under Section 332 of IPC; whereas R.I. for one year for the offence punishable under Section 353 of IPC. The applicant was acquitted from the offence punishable under Sections 294 and 336 of IPC.

4) Against the said judgment and order the applicant preferred criminal appeal No.3/2012 before the Sessions Court at Bhokar. The learned Additional Sessions Judge partly allowed the appeal. The learned Sessions Judge set aside the conviction of the applicant under Sections 353 and 332 and acquitted the applicant from the said

offence. The learned Sessions Judge, however, convicted the applicant for the offence under Section 336 of IPC and sentenced him to suffer S.I. for three months. Aggrieved by, the applicant has preferred the present criminal revision.

5) Perused the impugned judgment and order. The order passed by the learned Additional Sessions Judge is apparently unsustainable. Admittedly, no appeal was preferred against the judgment and order passed by the learned Magistrate in RCC No.58/2010 whereby the applicant was acquitted of the offence punishable under Section 336 of IPC. The applicant was admittedly convicted for the offence punishable under Section 353 and 332 of IPC and the learned Additional Sessions Judge, in appeal preferred by the applicant, acquitted the applicant from both the aforesaid offences. In absence of any appeal preferred against the acquittal recorded by the learned Magistrate for the offence punishable

under Section 336 of IPC, the learned Additional Sessions Judge was not empowered to convict the applicant for the said offence. The impugned order, therefore, deserves to be quashed and set aside and is accordingly set aside. The applicant stands acquitted of the offence punishable under Section 336 of IPC. His bail bond stands cancelled. Criminal Revision Application stands allowed in the aforesaid terms.

(P . R . BORA)
JUDGE

bdv/