

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****CRIMINAL REVISION APPLICATION
NO.152 OF 2004.**

Madhav s/o Vithal Magar,
Age 40 Years, Occu. Agriculture,
r/o Baur, Taluka Kalamnuri,
District Hingoli.

... APPLICANT.
(Ori. Complainant)

VERSUS

- 1) The State of Maharashtra,
through Assistant Police Inspector,
Akhada Balapur Police Station,
Taluka Kalamnuri,
District Hingoli.
- 2) Ashok s/o Vithalrao Kokare,
age 35 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.
- 3) Dattarao s/o Vithalrao Kokare,
age 51 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.
- 4) Madhavrao s/o Paroji Kokare,
age 57 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.
- 5) Arvind s/o Madhavrao Kokare,
age 24 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.

- 6) Ramakant s/o Vithalrao Kokare,
age 40 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.
- 7) Vikas s/o Madhavrao Kokare,
age 27 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.
- 8) Panjab s/o Vithalrao Kokare,
age 31 years, occu. Agril.,
r/o Baur, Taluka Kalamnuri,
District Hingoli.

... **RESPONDENTS.**

(Nos.2 to 8 – Orig. Accused
Nos.1 to 7).

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Mr.G.A. Kulkarni, Advocate h/f Mr.R.S. Deshmukh,
Advocate for petitioner.

Mr.B.A. Shinde, Addl. P.P. For the respondent – State.

Mr.N.B. Patekar, Advocate h/f Mr.P.R. Katneshwarkar,
Advocate for R.Nos.2 to 8.

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CORAM : V.L. ACHLIYA, J.

Reserved on: 20th February, 2017.

Pronounced on: 27th June, 2017.

JUDGMENT:

Being aggrieved by the judgment and order of acquittal of accused passed by Additional Sessions Judge, Hingoli in Special Case No.20 of 1998, the applicant – original complainant preferred this revision application.

2. Madhav Vithal Magar – the complainant visited Police Station Balapur, District Parbhani and lodged complaint to the effect that on 8.1.1998 at about 8 p.m., Ashok Kokare (accused No.1) was passing in-front of his house. At that time, his brother Damodhar told his nephew Vikas that in order to avoid theft of the bullocks, tie them on *Ota*. The accused No.1 Ashok, who was passing in front of the house, felt that Damodhar deliberately told Vikas to tie bullocks on *Ota* to avoid theft. Accused No.1 Ashok asked the complainant as to whether he is a thief and then abused them in the name of their caste and also called his brothers namely, Dattarao, Panjab and Ramakant. They came on the spot with stick and axe and assaulted the complainant, his brother and other persons with the help of sticks and axe. The complainant received blow of axe on his forehead as well as shoulder. After sustaining injury, complainant fell down. The other accused assaulted Damodhar and other persons, who too, sustained injuries by stick and axe. On the basis of complaint lodged, offences punishable under Sections 147, 148, 149, 307, 504 of IPC and section 3(1)(x) of the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 7(1)(d) of the Protection of Civil Rights

Act, 1955 came to be registered vide CR No.0003/1998. On conclusion of the investigation, charge-sheet was prepared and filed in the Court of Additional Sessions Judge, Hingoli.

3. In order to bring home the guilt of the accused, prosecution examined twelve witnesses. The accused have not entered into defence. In nutshell, the accused have taken defence of false implication at the instance of complainant due to enmity between them. On conclusion of the trial, learned Additional Sessions Judge has acquitted the accused mainly for the reason that the evidence as adduced by the prosecution, found to be not sufficient to prove guilt of the accused beyond reasonable doubt. It is observed that there is no cogent, convincing and reliable evidence to prove the guilt of the accused beyond reasonable doubt. The witness examined by prosecution found to be interested witness and in absence of independent witnesses, unsafe to convict the accused. The testimony of the injured witnesses also found to be not consistent with the medical evidence. On due appreciation of overall evidence, acquitted the accused. Being aggrieved, the applicant – original complainant has preferred this revision application seeking setting aside the impugned

judgment and order and to remand the case for fresh decision.

5. I have heard the submissions advanced by the learned Counsel for the applicant, the respondents – accused and the learned APP for the State and further perused record and proceedings of the trial Court.

6. In nutshell, it is contention of the learned Counsel for the applicant that the impugned judgment and order passed by the trial Court is perverse. Prosecution has adduced cogent and convincing evidence to prove the guilt against the accused, and the reasons and findings recorded by the trial Court are perverse and unsustainable in law and resulted into miscarriage of justice. It is the contention of the learned Counsel for the applicant that there is total non application of mind and misreading of the evidence on the part of the learned Judge of the trial Court. By referring the evidence adduced by the prosecution, the learned Counsel submitted that the evidence, as adduced by the prosecution, has proved the guilt of the accused beyond reasonable doubt.

7. On the other hand, learned Counsel for the respondents – accused supported the judgment and order passed by the trial Court and contended that there is no scope to interfere with the judgment and order passed by trial Court in exercise of revisional jurisdiction by this Court. The learned Counsel submitted that the reasons and findings recorded by the trial Court are based upon due appreciation of the evidence and the view adopted by the trial Court is a possible view in the matter. In exercise of revisional jurisdiction, the Court is not expected to act as a Court of appeal to appreciate and re-appreciate the entire evidence. In nutshell, he contended that the judgment and order passed by the trial Court calls for no interference in exercise of revisional jurisdiction. In support of the submissions advanced, learned Counsel has referred and relied upon the decision of the Apex Court in the case of ***Bansi Lal and others vs. Laxman Singh***¹ and ***Jagannath Choudhary and others vs. Ramayan Sisngh and another***².

8. In counter to the submissions advanced by the learned Counsel for the respondents – accused, learned Counsel for

1 1986 CRI.L.J.1603;

2 (2002) 5 SCC 659;

the applicant placed reliance on the decision of the Apex Court in case of **Jodhan vs State of Madhya Pradesh**³, **K. Chinnaswamy Reddy vs. State of A.P. and another**⁴, **Ayodhya Dube and others vs. Ram Sumer Singh**⁵, and **Ram Briksh Singh and others vs. Ambika Yadav and another**⁶, with contention that the High Court, in exercise of revisional jurisdiction, can examine the matter in depth if the judgment and order passed by the trial Court is perverse and resulted into miscarriage of justice.

9. I have thoroughly considered the rival submissions in the light of decisions referred and relied upon by the learned Counsel for the parties. In the case of **Jagannath Choudhary and others** (supra), the Apex Court, after taking survey of precedents of law laid down as to scope of exercise of revisional jurisdiction by High Court against an order of acquittal, observed in paras 9 and 10, as under:

“9. Incidentally the object of the revisional jurisdiction as envisaged under Section 401 was to confer upon superior criminal court a kind of paternal

3 (2015) 11 SCC 52;

4 AIR 1962 SC 1788;

5 AIR 1981 SC 1415;

6 (2004) 7 SCC 665;

or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals. (See in this context the decision of this Court Janata Dal v. H.S. Choudhary and Ors., [1992] 4 SCC 305). The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction.

10. While it is true and now well-settled in a long catena of cases that exercise of power under Section 401 cannot but be ascribed to be discretionary - this discretion, however, as is popularly informed has to be a judicious exercise of discretion and not an arbitrary one. Judicial discretion cannot but be a discretion which stands "informed by tradition, methodised by analogy and disciplined by system" - resultantly only in the event of a glaring defect in the procedural aspect or there being a manifest error on a point of law and thus a flagrant miscarriage of justice, exercise of revisional jurisdiction under this statute ought not to be called for. It is not to be lightly exercised but only in exceptional situations where the justice delivery system requires interference for correction of manifest illegality or prevention of a gross miscarriage of justice. In *Nosibolla : Logendranath Jha and Chinnaswamy Reddy* (supra) as also in *Thakur Das (Thakur Das (Dead))* by

Lrs. v. State of Madhya Pradesh and Anr., [1978] 1 SCC 27 this Court with utmost clarity and in no uncertain terms recorded the same. It is not an appellate forum wherein scrutiny of evidence is possible neither the revisional jurisdiction is open for being exercised simply by reason of the factum of another view being other wise possible. It is restrictive in its application though in the event of there being a failure of justice there can said to be no limitation as regards the applicability of the revisional power.”

10. In the case of **Bansi Lal and others** (supra) the Apex Court has observed that while dealing with an order of acquittal passed by the trial Court, in exercise of revisional jurisdiction, there is very little scope. Only in the case of failure to follow fundamental principles of law by the trial Court resulting into injustice, the High Court is expected to set aside order of acquittal and direct retrial of acquitted accused. It is further observed that such power should be exercised sparingly and with great care and caution.

11. In the case of **K.Chinnaswamy Reddy vs. State of A.P. and another** (supra), the Apex Court has considered the scope of exercise of revisional powers by High Court as against order of acquittal of accused in a proceeding filed at the instance of private parties. In para 7 of the said judgment, the Apex Court observed, thus:

“7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of a. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of a. 439 (4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.”

12. Similarly, in the case of **Ram Briksh Singh and others vs. Ambika Yadav and another** (supra), on due consideration of all the previous decisions of the Apex Court on the issue, it has been observed in paras 3, 4, 5, 6 and 7, as under:

“3. The principles on which revisional court can set aside a judgment and order of acquittal passed in favour of the accused are well settled by catena of judgments. The difficulty, however, arises at times about the application of the said principles. It is true that there is a statutory prohibition contained in sub-section (3) of Section 401 of Criminal Procedure Code from converting a finding of acquittal into one of conviction and what is prohibited cannot be done indirectly as well. The question, however, is has High Court indirectly done what is prohibited.

4. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice.

5. More than half a century ago, in *D. Stephens v. Nosibolla* (1951 SCR 284 = AIR 1951 SC 196), this Court held that revisional jurisdiction when it is invoked against an order of acquittal by a private complainant is not to be lightly exercised, it could be exercised only in exceptional cases to correct a manifest illegality or to prevent a gross miscarriage of justice and not to be ordinarily used merely for the reason that the trial court has misappreciated the evidence on record.

6. In *K.Chinnaswamy Reddy v. State of Andhra Pradesh & Anr.* (1963 (3) SCR 412 = AIR 1962 SC 1788) a note of caution was appended so that the High Court does not convert a finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot directly convert a finding of acquittal into a finding of conviction in view of specific statutory prohibition. While noticing that it is not possible to lay down the criteria for determining exceptional cases which would cover all contingencies for exercise of revisional power, some cases by way illustration were mentioned wherein the High Court would be justified in interfering with the finding of acquittal in revision. The High Court would be justified to interfere where material evidence is overlooked by the trial court.

7. In a recent decision in *Bindeshwari Prasad Singh v. State of Bihar [now Jharkhand] & Anr.* ([2002] 6 SCC 650) noticing principles laid in *Stephen's* and *Chinnaswamy Reddy* it was held that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code since it was well settled that the order of acquittal cannot be interfered with in revision merely on the ground of errors in appreciation of evidence. Relying upon these decisions, Mr. Misra contends that the High Court while interfering with the judgment and order of the Court of Sessions has not kept in view the parameters of exercise of revisional jurisdiction.”

13. In the light of the scope of exercise of revisional jurisdiction by High Court against the order of acquittal in a revision filed by a private party as laid down by the Apex Court, I have considered the submissions advanced by learned Counsel for parties as to merit of the case. As

discussed, the respondent Nos.2 to 8 were prosecuted for offences punishable under Sections 147, 148, 149, 307, 504 of IPC and section 3(1)(x) of the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989. In order to prove its case, prosecution has examined twelve witnesses. The learned Additional Sessions Judge, Hingoli has acquitted the accused on due consideration of evidence adduced in the case. The acquittal has been recorded mainly on the ground that the prosecution has failed to prove its case beyond reasonable doubt. While recording the findings, the trial Court has observed that the witnesses examined by the prosecution to bring home guilt of the accused are related to each other and interested witnesses. On due appreciation of the evidence and broad principles to be taken into account while appreciating the evidence of such witnesses, the trial Court has observed that it is unsafe to rely upon the testimonies of interested witnesses without seeking corroboration from independent witness. Upon considering the testimonies of the witnesses examined by the prosecution, the trial Court has found their evidence as not cogent, consistent and reliable to base the conviction. It is further noted that oral testimonies of the witnesses to the incident

and particularly, injured witnesses find no corroboration from the medical evidence. Thus, the acquittal recorded by the trial Court is based upon due appreciation of the evidence of the witnesses examined by the prosecution.

14. The learned Counsel for the appellant strenuously contended that the prosecution witness Madhav (P.W.1), Kailas (P.W.3), Damodhar (P.W.5) and Vikas (P.W.6) had sustained injuries in the incident and they were injured witnesses. There was no reason for the trial Court to have discarded their testimonies, only for the reason that they are related to each other. He submits that it is quite settled position in law that the evidence of related witness is very much admissible in law and cannot be brushed aside merely for the reason that they are interested persons. The only precaution which needs to be taken while dealing with the testimonies of such witnesses is that the Court should adopt cautious approach and in an appropriate case, insist for corroboration. He, therefore, submits that the reasons and findings recorded by the trial Court are *per se* perverse, unsustainable in law and resulted into serious miscarriage of justice to the applicant and it is a fit case wherein the

revisional powers of this Court be exercised to prevent miscarriage of justice being resulted to applicant. In this context, learned Counsel has placed reliance on the decision of the Apex Court in the case of **Jodhan vs State of Madhya Pradesh** (supra) and invited attention to paras 15 and 29 of the judgment which reads, thus:

“15. In *Kallu v. State of M.P.* (2006) 10 SCC 313:(2006) 3 SCC (Cri)546), it has been held that if the view taken by the trial court is a plausible view, the High Court will not be justified in reversing it merely because a different view is possible. Elaborating further It has been ruled that while deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt.

29. From the aforesaid summarization of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt-guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant

that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge.”

15. In my view, the decision referred and relied upon by the learned Counsel for the applicant, has no bearing on the facts of the case as the broad principles to be kept in mind while exercising the revisional jurisdiction in such matter, clearly spell out that the revisional court is not expected to exercise its powers against the order of acquittal unless the case of exceptional nature is made out. High Court in exercise of revisional jurisdiction is not expected to sit in appeal as that of appellate court to evaluate the evidence in minute details and correct the findings of fact recorded by the court below. In the instant case, the finding of acquittal has been recorded on the basis of due appreciation of evidence on record. The view taken by the trial Court is a possible view in the matter. The reasons and findings recorded by trial Court cannot be termed as perverse.

16. While dealing with the testimonies of material witnesses, examined by the prosecution, which include the injured witnesses, the trial Court has observed that though they are interested witnesses, still their testimonies cannot be

outrightly rejected on that count. It is observed that evidence of such witnesses requires close and cautious scrutiny. After reiterating the broad principles to be borne in mind in appreciating the testimonies of interested witnesses, the trial Court has analyzed the evidence in depth and arrived to a finding that it is unsafe to base the conviction on their testimonies in absence of corroboration from independent evidence. Thus, the view taken by the trial Court cannot be termed as contrary to law. If two views are possible and the trial Court has taken the possible view, then in exercise of appellate jurisdiction, the appellate court is not expected to interfere with such findings of acquittal recorded by the trial Court. By and large, it is quite settled position of law that the order of acquittal cannot be interfered in revision unless there are compelling and substantial reasons for doing so. It is nowhere the case of the applicant that the trial Court has ignored the evidence or misread the material evidence. In my view, no case of exceptional nature has been made out to call for exercise of revisional jurisdiction against the impugned order of acquittal recorded by the trial Court, that too, in a revision petition filed by the private party.

17. In view of above, revision application filed by the applicant deserves to be rejected. Accordingly, revision application is rejected. Rule discharged.

[V.L. ACHLIYA, J]

Kadam.