

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 156 OF 2004

Bhimrao Bhaginath Bhivrao
Age: 47 years, Occu.: Ex-Govt. Servant,
R/o Jaibhavaninagar, Sillod,
Tq. Sillod, Dist. Aurangabad.

..APPLICANT

VERSUS

1. State of Maharashtra

2. Anilsingh Dashrathsingh Gautam
Age: 42 years, Occu.: Service,
R/o Police Quarters, Police Colony,
Tq. Sillod, Dist. Aurangabad.

..RESPONDENTS

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Mr. A.S. Barlota, Advocate h/f Mr. S.K. Barlota, Advocate for applicant.
Mr. K.D. Mundhe, A.P.P. for Respondent No.1 - State.

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**CORAM : T.V. NALAWADE, J.
DATED : 04th JANUARY, 2017**

ORAL JUDGMENT :

1. The revision application is filed to challenge the judgment and order made in R.C.C. No. 65 of 1998 which was pending in the Court of Judicial Magistrate, First Class, Sillod and also the judgment and order made in Criminal Appeal No. 89 of 2002 which was pending in the Court of Second Additional Sessions Judge, Aurangabad. The applicant is convicted for the offence punishable under Section 323 of the Indian

Penal Code. The sentence of imprisonment till rising of the Court and fine amount of Rs.500/- is imposed. Both sides are heard.

2. The present applicant was working as police constable in Sillod City Police Station. The first informant – Anilsingh was working as Police Sub-Inspector in this police station. The incidence took place on 27th November, 1997 at about 13.00 hours. When Anilsingh was about to enter the campus of police station, present applicant intercepted him and picked up the quarrel.

3. The applicant was angry with Anilsingh as the applicant was marked absent on duty on previous day by Anilsingh. During quarrel, present applicant took out the waist belt and attempted to give blow of belt on the head of Anilsingh. To save himself, Anilsingh caught hold of belt but it was snatched by present applicant from hands of Anilsingh and due to that Anilsingh sustained injury to his fingers. Anilsingh tried to convince the present applicant to behave well but present applicant was not in mood to listen. The applicant then gave abuses to Anilsingh and he also gave threat of life. When the quarrel was going on, some persons like Shabir, Vilas and others came there and staff of police station like Siraj Pathan, Chate and Kulkarni also rushed there. During this quarrel,

damage was caused to the shirt of Anilsingh. The other persons rescued Anilsingh. On the same day, Anilsingh filed report in Sillod City Police Station and investigation was taken over by senior police inspector. Crime was registered for offence punishable under Sections 353, 332, 294, 504 and 506 of the Indian Penal Code. The investigation officer recorded the supplementary statement of Anilsingh. Then, Anilsingh went to government hospital for medical examination and he was examined there.

4. During the course of investigation, statements of aforesaid constables and others were recorded and the charge-sheet was filed for aforesaid offences. The applicant pleaded not guilty when charge was framed. The prosecution examined in all 11 witnesses who included the first informant – Anilsingh, two eye witnesses and medical officer.

5. The Trial Court believed Anilsingh and used the evidence of medical officer. The conviction is given only for the offence punishable under Section 323 of the Indian Penal Code.

6. Learned Counsel for applicant submitted that there was evidence of only first informant and so it was not proper to give

conviction on the basis of sole testimony of the first informant. Learned Counsel submitted that medical evidence was not convincing and there was no original record like M.L.C. register. Learned Counsel submitted that circumstance that on the same day report was given by applicant against Anilsingh and two other constables is not considered by the Courts below and benefit of this circumstance needs to be given to the applicant. It was submitted that the applicant may not get pension due to this conviction and aforesaid sentence.

7. This Court has carefully gone through the original record and judgment delivered by the Court below. The main witness is Anilsingh. He has given evidence as per the aforesaid contentions made in the F.I.R. It is brought on record in the cross-examination of Anilsingh that he had issued many memos to the present applicant. This circumstance is not in support of defence. The circumstance that more than 35 memos were given against the applicant is certainly against him and it shows that he was not discharging the duty properly and even when he was remaining absent on duty, he wanted to see that he is marked present in the record. This circumstance shows that there was motive for the incident. In the cross-examination, it is brought on record that after registration of crime and filing of case, present applicant had collected persons to take

agitation against the P.S.I. It shows that he was not acting as per the rules framed for public servant in this regard.

8. The suggestions were given to the Anilsingh that on 17th August, 1997, the applicant had given complaint to D.S.P. against Anilsingh and he had made allegation that Anilsingh was indulging in corruption. This suggestion cannot help the applicant in any way as it is brought on record that an many as 35 memos were required to be given to the applicant due to his conduct. Suggestion was also given that on the same day beating was given to the applicant by Anilsingh and two other constables like Chate and Kulkarni and in respect of that incidence, complaint was given to the C.P.I. and D.S.P. by present applicant. Anilsingh admitted that such complaint was given but he has denied that such incident took place.

9. It is brought on record in evidence of medical officer that on the same day, he had examined the present applicant and some treatment was given to the applicant. The doctor admitted that he had given treatment to the applicant on the night between 27th November and 28th November. It was submitted that medical officer was not available as his duty time was over. Such contention cannot be accepted. The evidence

of medical officer shows that he fairly admitted many things. It is true that the pages of register maintained by hospital about the examination of these two persons are missing but that does not mean that present applicant was not examined. M.L.C. was issued by doctor and it is duly proved. Those pages were found to be torned. Benefit of this circumstance cannot be given to the present applicant in view of the facts of the present matter.

10. Two witnesses, Chate and Kulkarni, police constables supported the case of Anilsingh. Though the Trial Court has held that those two witnesses must have reached the spot when incidence was over, the fact remains that the incidence did take place as described by the applicant.

11. On the basis of the material given against the present applicant, it can be said that the applicant is fortunate that he is convicted for the offence punishable under Section 323 only when he could have been convicted under Section 353 also. Further, the sentence given also shows that much lenient view is taken by the Court of Judicial Magistrate First Class. There is nothing illegal or improper in the decision given by the Trial Court which is confirmed by the First Appellate Court. This

Court sees no reason to interfere in the decision given by two Courts below. In the result, revision application stands dismissed.

(T.V. NALAWADE, J.)

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