

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

CRIMINAL REVISION APPLICATION NO. 227 OF 2016

Suresh Shamrao Salve
Age: 53 years, Occu.: Govt. Service,
R/o Nandurbar, Tq. & Dist. Nandurbar. ..APPLICANT

VERSUS

1. State of Maharashtra

2. Ushabai Kantilal Mohite
Age: 59 years, Occu.: Household,
R/o Nandurbar, Tq. & Dist. Nandurbar. ..RESPONDENTS

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Mr. C.R. Deshpande, Advocate for applicant.
Mr. S.J. Salgare, A.P.P. for Respondent No.1 – State.
Mr. S.B. Rajebhosale, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE, J.
DATED : 12th JANUARY, 2017**

ORAL JUDGMENT :

1. Revision is admitted. Notice after admission, made returnable forthwith. Heard both sides by consent for final disposal.

2. Point involved in the present matter is short. Present applicant was charge-sheeted for the offences punishable under Sections 354, 323, 504, 506(ii) of the Indian Penal Code. The Chief Judicial Magistrate,

Nanded has acquitted the applicant of all the offences. Against this decision, Criminal Appeal No. 14 of 2015 was preferred by State Government. Similarly original complainant had filed Criminal Appeal No. 9 of 2015 in the Sessions Court. It appears that both appeals were heard together and by delivering common judgment, Sessions Judge, Nandurbar allowed the appeals and set aside the decision given by the Trial Court and the matter is remanded back to the Trial Court to decide the matter afresh. The decision given by the Appellate Court shows that no evidence is to be recorded but statement of accused is to be again recorded under Section 313 of the Code of Criminal Procedure and then after hearing both sides, the matter is to be decided by the Trial Court.

3. It is not disputed that both appeals were tenable in Sessions Court. The reason given for setting aside the judgment of acquittal can be found in paragraph no.5 and it reads as under:-

“5. While, perusing the record I found that the statement of the accused under section 313 of Cr.P.C. has not been properly recorded. As against question no.33, do you want to say anything more about this case?, no answer is recorded. As regards the question no.30 as to why witnesses are deposing against you? the answer is recorded as 'it is false'. As regards other questions only answer is

recorded 'it is not true' though questions were like PW-10 Prakash Tulshiram Mali was attached to Nandurbar city police station and investigation of crime no. 02/2013 was handedover to him. Considering the fact that the statement of the accused under section 313 of Cr.P.C. has not been recorded properly, in my view it would be appropriate to remand the matter back to the trial court for recording the said statement afresh.”

4. The Judge of the Sessions Court has observed that statement of accused under Section 313 was not properly recorded as some answers are not recorded. The specific questions are mentioned and answers are mentioned in this paragraph. When accused does not give reply to a question or when the accused gives reply which is not relevant with the case, it can be said that the accused is not availing the opportunity to answer or explain the incriminating piece of evidence. Submissions made show that all the incriminating pieces of evidence mentioned in the statement recorded under Section 313 of the Code of Criminal Procedure were considered by the Trial Court against the accused and in spite of that decision of acquittal was given in favour of accused.

5. Further, there is one provision like Section 391 of the Code of Criminal Procedure enabling the Appellate Court even to record the

additional evidence. When the additional evidence is recorded or when the Court feels that opportunity needs to be given to the accused to explain few things, this can be done by the Appellate Court itself. For that the Appellate Court ordinarily is not expected to set aside the decision of Trial Court. If such approach is not used, criminal matter cannot be decided expeditiously.

6. The submissions made in the present matter show that accused has no grievance with regard to the manner in which the statement under Section 313 of the Code of Criminal Procedure is recorded. If accused has no grievance and when statement under Section 313 is recorded to give an opportunity to accused to explain the things, it was not proper on the part of the Appellate Court to set aside the decision of acquittal on such grounds. This Court holds that the decision of the Sessions Court cannot sustain in law. It can be said that the Court by taking such steps is virtually avoiding to decide the matter on merits. In view of this circumstance, this Court holds that decision given by the Sessions Judge, Nandurbar needs to be set aside.

7. In the result, petition is allowed. Decision given by the Sessions Court in Criminal Appeal Nos. 9 of 2015 and 14 of 2015 is

hereby set aside. The matters are remanded back to the Sessions Court for deciding both matters on merits.

(T.V. NALAWADE, J.)

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