

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.15 OF 2008

Shivaji s/o Sahebrao Yeole,
Age : 60 years, Occu. Agri.,
R/o Gond, Taluka Georai,
District Beed

PETITIONER
(Ori. Accused No.1)

VERSUS

The State of Maharashtra

RESPONDENT

Mr. Naseem R. Shaikh, Advocate for the petitioner
Ms. R.P. Gaur, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 19th JULY, 2018

ORAL JUDGMENT :

The petitioner and three others were prosecuted for the offences punishable under Sections 326 and 323 read with Section 34 of the IPC. The petitioners and two others were convicted by the learned Judicial Magistrate, First Class (Court No.2), Georai in R.C.C. No. 132 of 1997, for the offences punishable under Sections 324 and 323 read with Section 34 of the IPC and each of them were sentenced

to suffer rigorous imprisonment for one year and to pay a fine of Rs.2000/- in respect of the offence under Section 324 of the IPC and rigorous imprisonment for six months and a fine of Rs.1000/- in respect of the offence under Section 323 of the IPC. The substantive sentences were directed to run concurrently. The petitioner has deposited the fine amount.

2. The petitioner and two others challenged their conviction and sentence by filing Criminal Appeal No. 24 of 2006. The learned Sessions Judge heard the learned counsel for the petitioner and the learned A.P.P. and after considering the facts and circumstances of the case as well as evidence on record, acquitted the petitioner and two others of the offence punishable under Section 323 of the IPC, acquitted two other accused of the offence punishable under section 324 of the IPC, but maintained conviction of the petitioner for the offence punishable under Section 324 of the IPC and sentenced him to suffer rigorous imprisonment for one month and maintained the order imposing the fine, passed by the learned Magistrate. The petitioner has challenged the said conviction and sentence by this Revision Application.

3. The learned counsel for the petitioner, on instructions, submits that the petitioner is not pressing hard against the findings recorded by the Courts below, holding the petitioner guilty for the offence punishable under Section 324 of the IPC. However, considering the fact that the incident took place in the year 1997, the relations between the petitioner and the informant have now become cordial, the petitioner is now aged about 67 years and he has no criminal antecedents, he may be given benefit of probation.

4. The learned A.P.P. opposed the prayer made on behalf of the petitioner for grant of probation.

5. As per Section 361(a) of the Code of Criminal Procedure ("Code", for short), where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958, but has not done so, it shall record in its judgment the special reasons for not having done so. As per Section 248 (2), where under Chapter XIX of the Code, the Magistrate finds the

accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

6. In the present case, the petitioner has been connected for the offence punishable under Section 324 of the IPC for which the maximum punishment prescribed is imprisonment for three years or fine or both. As such, the case of the petitioner could have been dealt with under the provisions of the Probation of Offenders Act. The provisions of Section 361 (A) of the Code are mandatory. As submitted by the learned Counsel for the petitioner, the incident had taken place in the year 1997. The relations between the petitioner and the informant have become cordial. The petitioner is now aged about 67 years. There is no previous conviction to his credit. Under the circumstances, it would be just, proper and expedient to extend the benefit of probation to the petitioner. In the result, the Revision Application will have to be allowed partly and the impugned order of sentence passed against the petitioner will have to be modified so as to extend the benefit of probation to him. Hence, I pass the following order:-

O R D E R

(A) The Criminal Revision is partly allowed.

(B) The conviction of the petitioner for the offence punishable under Section 324 of the Indian Penal Code is maintained. However, the order of sentence passed against him by the learned Sessions Judge, Beed is quashed and set aside.

(C) The petitioner - Shivaji s/o Sahebrao Yeole is directed to be released under Section 4 of the Probation of Offenders Act, 1958, on his entering into a bond in the sum of Rs.5000/- with one surety in the like amount to appear and receive sentence whenever called upon by this Court within a period of one year and in the meantime, to keep the peace and be of good behaviour.

(D) The petitioner shall execute the aforesaid bond in the sum of Rs.5000/- (Five Thousand) with a surety in the like amount in the Trial Court on or before 2nd August, 2018.

(E) The bail bonds of the petitioner are cancelled.

(F) The fine amount deposited by the petitioner shall be refunded to him.

(G) Inform the Trial Court accordingly.

(H) The Revision Application is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE

npj/crirevn15-2008