

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

CRIMINAL REVISION APPLICATION NO. 30 OF 2005

Venkati s/o. Gunaji Wadje,
Age 31 Years, Occu. Agriculture,
R/o. Temburni, Tq. Naigaon,
Dist. Nanded.

... Petitioner

versus

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay Bench
At Aurangabad)

... Respondent

.....

Mr. A. M. Gaikwad, Advocate for the Petitioner
Mr. V. M. Kagne, APP for Respondent-State

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CORAM : V. K. JADHAV, J.
Reserved on : 29/09/2018
Pronounced on : 04/10/2018

JUDGMENT:-

1. This criminal revision application has been preferred against the judgment and order of conviction dated 24.12.2003 passed by the Judicial Magistrate, First Class, Dharmabad in R.C.C. No. 57 of 1999 for the offence punishable under Section 419 of IPC, sentencing thereby the revision petitioner herein to undergo R.I. for two years with fine of Rs.500/-, in default, to undergo R.I. for two months. The said judgment and order of conviction is confirmed by

the 2nd Ad-hoc Additional Sessions Judge Biloli by judgment and order dated 20.01.2005 in Criminal Appeal No. 02 of 2004.

2. Brief facts giving rise to the present criminal revision application are as under :

a. On 22.06.1999, the Judicial Magistrate First Class, Dharmabad was also holding charge of Judicial Magistrate First Class, Naigaon and some non-cognizable (NC) cases filed with Naigaon court were brought to the court of Dharmabad. The Police Constable Vithal Utkar had brought those NC cases alongwith the accused. In one of the NC cases, name of the accused was Sadashiv Nivrati Wadje, resident of Temburni. The said Police Constable inquired with the revision petitioner/original accused about his name. He had disclosed his name as Sadashiv Nivrati Wadje. Thus, the Police Constable Vithal Utkar had brought him alongwith NC papers in the in-charge court at Dharmabad.

b. The said case was called in the court at about 4.30 pm and the revision petitioner/original accused appeared before the court. He was asked his name by the court and he had disclosed his name as Sadashiv Nivrati Wadje. At that time, the APP Mr. M.I. Khan,

who was present in the court hall, disclosed to the court that the revision petitioner/original accused is disclosing his wrong name and he has been already prosecuted before the J.M.F.C. court at Naigaon for committing an offence punishable under Section 353 of IPC and his true and correct name is Venkati Gunaji Wadje, residence of Temburni. The APP had firmly stated before the court that name of the person is not at all Sadashiv Wadje, but Venkati Wadje. Thereafter, the court had also made inquiry with the revision petitioner/original accused and it was found that he had disclosed his false name as Sadashiv by suppressing his real name as Venkati Gunaji Wadje.

c. On the basis of the complaint lodged by said Police Constable Vithal Utkar, crime no.36 of 1999 came to be registered in the concerned police station and after due investigation, charge sheet was submitted to the court against the revision petitioner/accused for having committed an offence punishable under Sections 419 and 420 of IPC. The learned Judicial Magistrate First Class, by the impugned judgment and order dated 24.12.2003, has found the revision petitioner/original accused guilty and accordingly convicted him for the offence punishable under Section 419 of IPC and sentenced him as detailed above. The said judgment and order

of conviction is confirmed in criminal appeal no. 02 of 2004 by the learned 2nd Ad-hoc Additional Sessions Judge, Biloli.

3. Learned counsel for the revision petitioner/original accused submits that prosecution has utterly failed to prove the case against the revision petitioner/original accused for the offence punishable under Section 419 of IPC. He submits that both the courts below have committed an error in convicting the present petitioner for the offence of cheating by personation as the prosecution has not proved the offence of cheating. Learned counsel submits that the prosecution has failed to examine the person by name Sadashiv Wadje, who, according to the prosecution case, is the real culprit in the said NC case and the petitioner has posed himself as Sadashiv Wadje. Learned counsel submits that the prosecution has miserably failed to establish the basic ingredients of cheating as mentioned in Section 415 of IPC. The courts below have erroneously placed reliance on the evidence of PW-1 and PW5 respectively. The evidence of PW-3, PW-4 and PW-6 is full with material omissions and contradictions and their evidence contradict each other on material aspects. Learned counsel submits that even accepting the allegations as it is, the offence punishable under Section 419 is not

complete and as such, the same is required to be treated as an attempt only. The revision petitioner is a poor agriculturist and he is the only earning member of the family. His family members are dependent on him. Learned counsel submits that the petitioner is facing the consequences for all these years. This criminal revision application is pending since 2005. Learned counsel submits that this criminal revision application deserves to be allowed by setting aside the judgment and order of conviction passed by the courts below. In the alternate, learned counsel submits that, a lenient view may be taken having regard to the antecedents of the accused and his having undergone stress and strain of criminal prosecution for a long period and the nature of the offence committed by him.

4. In order to substantiate his contentions, learned counsel for the revision petitioner/original accused placed reliance on the case of ***Ram Jas vs. State of UP***, reported in ***AIR 1974 SC 1811***.

5. Learned APP submits that the prosecution has proved beyond doubt that on 22.06.1999 at Dharmabad, the revision petitioner/original accused cheated by pretending to be Sadashiv Nivrati Wadje and thereby fraudulently induced the complainant to do or omit to do some act which caused or was likely to cause harm

to the said complainant and thereby committed the offence punishable under Section 419 of IPC. The prosecution has examined the Police Constable Vithal Utkar/complainant(PW-1) who was present in the court hall. The prosecution has also examined PW-2 Ganpat Manikrao Sontakke and PW-3 Md. Azaroddin Md. Kaliloddin, who are Advocates by profession and who were also present in the court hall at the time of the alleged incident. PW-5 Bhimrao Ramji Gaikwad is a Peon of the court who had given call to the accused when the matter was placed before the court and called out for hearing. The prosecution has also examined the said APP Mr. M.I. Khan (PW-6), who had identified the revision petitioner/original accused as the person by name Venkati and not Sadashiv. Learned APP submits that there is no substance in this criminal revision application. Both the courts below have rightly convicted the accused. The criminal revision application is thus liable to be dismissed.

6. So far as the revisional powers of the High Court under Section 401 of Criminal Procedure Code, 1973 are concerned, the same are to be exercised in exceptional cases as follows :

I(a) If there is glaring defect in the procedure.

- (b) If there is manifest error on the point of law which is consequently resulted into flagrant miscarriage of justice.
- (c) The trial court has totally misread the evidence and has also failed to apply the well settled principles of law.
- II. When the prosecution evidence is altogether unsatisfactory and could not discharge the burden of proof.
- III. Where the conviction was based on no evidence, was legally misconceived and suffered non application of mind.
- IV. Where conviction is unfounded and illegal.
- V. Where the finding of conviction is unreasonable and perverse.
- VI. Where there is complete paucity of evidence and the order of conviction could not have been recorded.
- VII. The order of conviction is tainted with serious lapses and discrepancies, which resulted into serious prejudice to accused and there is total failure of justice.

7. In the instance case, the evidence of all these prosecution witnesses is reliable, consistent and trustworthy. Even the learned J.M.F.C., Dharmabad Court has also observed the same in his order. The evidence of PW-1 Police Constable Vithal Utkar and the

evidence of PW-6 APP Mr. M.I. Khan is important. The prosecution has succeeded in proving that the accused has committed cheating by personation. I find no fault in the judgment and order of conviction passed the learned Magistrate and confirmed by the Sessions Court in criminal appeal.

8. Further, revisional court should not interfere in such matters where the lower court has found the offence established against the revision petitioner and there is no error in appreciation of evidence. When there are concurrent findings on merits, interference is not warranted. Furthermore, there should be no interference when there is no error of law, impropriety of procedure or non-application of mind has been pointed out. In the instant case, I find no contingency as detailed above so as to justify the interference while exercising the revisional powers of this Court. However, I am inclined to consider the sentence to be reduced having regard to the antecedents of the accused, his having undergone stress and strain of criminal prosecution for a long period and the nature of offence committed by him. Learned Magistrate has convicted the revision petitioner/original accused for the offence punishable under Section 419 of IPC and sentenced him to undergo R.I. for

two years with fine of Rs.5,00/- and in default of payment of fine, to undergo R.I. for two months. I am inclined to reduce the same to R.I. for six months with fine of Rs.5,00/-, in default of payment of fine, to undergo R.I. for two months. Hence, the following order:

ORDER

- I. The criminal revision application is hereby partly allowed.
- II. The impugned judgment and order of conviction dated 24.12.2003 passed by Judicial Magistrate First Class, Dharmabad in R.C.C. No. 57 of 1999, confirmed by the 2nd Ad-hoc Additional Sessions Judge Biloli by judgment and order dated 20.01.2005 in Criminal Appeal No. 02 of 2004 is hereby maintained. However, the substantive part of the sentence is hereby modified as under

“The revision petitioner/original accused Venkati s/o Gunaji Wadje is hereby sentenced to undergo R.I. for six months with fine of Rs.5,00/-, in default of payment of fine, to undergo R.I. for two months.”
- III. The revision petitioner/original accused is entitled for set off.

IV. The criminal revision application is disposed of accordingly. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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