

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

902 CRIMINAL REVISION APPLICATION NO. 204 OF 2004

Ravindra s/o Ashok Wabale
Age: 21 years, Occu.: Agril,
R/o. Madhe Wadgaon, Tq.Shrigonda,
Dist.Ahmednagar.

..Applicant
(Orig. Accused)

Versus

The State of Maharashtra

..Respondent

...
Advocate for Applicant : Shri A.K.Bhosale
APP for Respondent : Shri A.S.Shinde
...

CORAM : PR.BORA, J.

DATE: 29th November, 2018

ORAL JUDGMENT:-

1. Heard the learned Counsel for the parties.
2. Present revision applicant was convicted by the IInd Ad-hoc Assistant Sessions Judge in Sessions Case No.102 of 2003 decided on 31.10.2003 for offence punishable under Sections 333, 332 and 353 of the Indian Penal Code (hereinafter referred to as 'the IPC'). The maximum sentence imposed by the learned IInd Ad-hoc Assistant Sessions Judge, Ahmednagar, is rigorous imprisonment for two years

with fine of Rs.1,000/- for the offence punishable under Section 333 of the IPC. The applicant filed Criminal Appeal No.79 of 2003 against the said Judgment before the Sessions Judge. The learned IInd Additional Sessions Judge, Ahmednagar, vide Judgment delivered on 30.04.2004 in the aforesaid Appeal, modified the order of conviction. The learned Additional Sessions Judge held the applicant guilty only for the offence punishable under Section 333 of the IPC and acquitted him from all other offences. The learned Additional Sessions Judge sentenced the applicant to suffer rigorous imprisonment for six months with fine of Rs.1,000/-, in default of payment of fine, to suffer simple imprisonment for one month, for offence punishable under Section 333 of the IPC. Aggrieved thereby, the applicant has preferred the present revision application.

3. Shri A.K. Bhosale, learned Counsel appearing for the applicant assailed the Judgments passed by the Courts below on several grounds. The learned Counsel submitted that very basic fact that the person with whom the present applicant said to have entered into quarrel and alleged to have caused grievous hurt to him, was not on duty at the relevant time and no such evidence was placed on record by the prosecution. The learned Counsel submitted that merely

because the said person was serving as Police Constable, presuming that he was on duty at the relevant time, the order of conviction has been passed.

4. The learned Counsel further submitted that the certificate, as has been issued by the Medical Officer, was also not free from doubt. The learned Counsel submitted that the Medical Officer, who has issued the said certificate, was known for issuing false certificates and in the past, he was reported to have issued such certificates for which he was prosecuted also. In the circumstances, it was the contention of the learned Counsel that the offence as has been alleged against the present applicant under Section 333 of the IPC, was not proved beyond the reasonable doubt by the prosecution. The learned Counsel submitted that if the evidence on record is considered properly, the only inference, which would emerge, will lead to acquittal of the applicant. In the circumstances, the learned Counsel prayed for setting aside the impugned Judgments and consequently, to acquit the applicant.

5. In the alternative, it was submitted by the learned Counsel of the applicant that if this Court is not inclined to accept the contention

of the present applicant and holds that the alleged offence was committed by the present applicant, having regard to the fact that the alleged incident had occurred prior to about 15 years and further that the applicant has already undergone imprisonment for some period, the punishment as has been imposed by the Sessions Court be modified and the applicant be released on the imprisonment already undergone by increasing the amount of fine.

6. Shri A.S.Shinde, learned APP appearing for the respondent - State supported the impugned Judgments. The learned APP submitted that clinching evidence has been produced on record by the prosecution showing that the informant, who was assaulted by the present applicant, was on duty as Police Constable at the relevant time. The learned APP submitted that sufficient evidence has also been brought on record by the prosecution showing that grievous hurt was caused to the Police Constable by the present applicant. The learned APP submitted that both the Courts below have rightly held the applicant guilty for the offence punishable under Section 333 of the IPC and no interference is required in the Judgments so passed.

7. The learned APP also opposed the alternative request made by

the learned Counsel for the applicant to modify the sentence imposed upon the applicant. The learned APP submitted that considering the offence committed by the applicant, no leniency deserves to be shown. The learned APP submitted that the Sessions Court has already taken a lenient view. It was further contended that in view of the fact that a Police Constable was assaulted by the present applicant, while he was performing duty, no more leniency can be shown to the present applicant. The learned APP, therefore, prayed for rejecting the revision application.

8. I have given due consideration to the submissions made by Shri Bhosale, learned Counsel for the applicant and Shri Shinde, learned APP appearing for the respondent State. I have perused the Judgments passed by the Courts below as well as evidence on record. I need not to make further discussion in view of clinching evidence on record showing that present applicant had made an assault on the Police Constable. By examining necessary witnesses, the prosecution has sufficiently proved the acts of the present applicant. There is no substance in the contentions raised by Shri Bhosale, learned Counsel that there was no evidence showing that the Police Constable concerned was on duty at the relevant time. The material on record

shows that sufficient evidence in that regard was adduced and it was beyond the reasonable doubt proved that said Police Constable was on duty when he was assaulted by the present applicant. The medical certificate has also been duly proved. Merely because the Medical Officer concerned was having some adverse record, that may not have any impact, in absence of contrary evidence showing that certificate issued by him in the present matter in any way is false or incorrect. In view of the evidence on record, I see no merit in the arguments made by learned Counsel for setting aside the order of conviction. On going through the material on record, I am convinced that the Additional Sessions Judge has rightly maintained the conviction of the present applicant for the offence under Section 333 of the IPC. In so far as order of conviction is concerned, I see no case for causing interference therein.

9. The alternative submission has been made by the learned Counsel for the applicant for reducing quantum of sentence awarded to the applicant. The record reveals that the applicant has undergone the imprisonment for a week during pendency of the present criminal revision application. The applicant was taken in custody on 30.04.2004 and this Court released him on bail on 06.05.2004. The

record reveals that at the time of commission of offence i.e. on 07.03.2003, the applicant was aged about 21 years. The facts of the case also reveal that the applicant was attempting to enter into a school allegedly with some copying material with him and was accosted by Police Constable Shri Yuvraj Kolhe. The record also shows that in an attempt to escape from the clutches of the Police Constable, a dash was given by the applicant to Police Constable Shri Yuvraj Kolhe because of which he fell down and suffered fracture injury. It is thus evident that there was no intention of the applicant to cause any fracture to the Police Constable.

10. Having considered the fact as aforesaid and more particularly, having regard to the fact that alleged incident has occurred prior to about 15 years, and further having regard to the fact that there are absolutely no criminal antecedents to the present applicant, it appears to me that there is no propriety now in sending the present applicant behind the bars after 15 years of the alleged occurrence. However, while further reducing the substantive sentence, balance can be struck by adequately imposing the amount of fine. For the reasons stated above, the following order is passed:-

ORDER

I) Though, the order of conviction passed by IInd Ad-hoc Assistant Sessions Judge, Ahmednagar, passed in Sessions Case No.102 of 2003, holding the applicant guilty for an offence punishable under Section 333 of the IPC is maintained, the sentence imposed upon by the applicant by the said Court is modified as under;

“The applicant is sentenced to suffer the imprisonment already undergone and also to pay fine of Rs.25,000/-, in default, to suffer simple imprisonment for six months.”

II) The revision application stands allowed in the aforesaid terms.

III) The Sessions Judge, Ahmednagar, shall ensure the execution of the aforesaid order and report the compliance accordingly.

(PR.BORA)
JUDGE

SPT

