

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.573 OF 2017

Kisan Shevu Pawar .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....
Mr.Anant vadgaonkar, Advocate for the Applicant.
Mr.Swapnil S. Pednekar, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 10, 2018.

P.C. :

The applicant has preferred this application challenging the judgment and order dated 6th January, 2016, passed by the learned Chief Judicial Magistrate, Solapur in Regular Criminal Case No.1348 of 2011 as well as the judgment and order dated 30th October, 2017, passed by the Sessions Judge, Solapur in Criminal Appeal No.56 of 2016.

2 The applicant has been convicted for an offence punishable under Section 353 of the Indian Penal Code (IPC) and was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.5000/- and in default to suffer further

rigorous imprisonment for one month. The applicant was, however, acquitted of the offences punishable under Sections 332 and 504 of the Indian Penal Code.

3 The case of the prosecution is that the first informant is serving as a operator at the office of Maharashtra State Electricity Distribution Company Limited, Mandrup. On 16th December, 2010 he was on duty between 4:00 p.m. to 12:00 a.m. At about 6:45 p.m, the accused made a telephone call and informed the first informant about the power outage in Tera Mail. The accused was informed that the wireman will visit the place shortly. After some time, accused gave another call and inquired about the wireman. At that time, he was informed that due to non availability of the vehicle, the wireman could not reach the place to get the work done. The accused, thereafter, reached the office of the first informant. The accused abused the informant in filthy language and assaulted him by giving fist and kick blows. The accused also assaulted another person namely Dayanand Swami, who was at the relevant time working as a wireman in the office of MSEDCL. Police reached at the place of incident and apprehended the accused. First Information Report (FIR) was lodged, which was investigated and the charge-sheet was filed.

4 The prosecution examined four witnesses. PW 1 is Annappa Vijapure, is the first informant, PW 2 Dayanand Swami is the eye-witness to the incident as well as injured person, PW 3 Sunil Kevate is another eye witness and PW 4 Allabaksh Sattar Sayyad is the investigating officer. The prosecution relied upon the evidence of the aforesaid witnesses and the documentary evidence in the nature of report lodged by PW1 and letter given by the investigating officer to the medical officer.

5 The trial Court vide judgment and order dated 6th June, 2016, convicted the applicant for the offence punishable under Section 353 of IPC and he was sentenced to suffer R/I for six months and to pay fine of Rs.5,000/-. He was acquitted of the offences punishable under Sections 332 and 504 of the IPC. The applicant, thereafter, preferred an Appeal before the Sessions Court which was dismissed vide judgment and order dated 30th October, 2017. The applicant was taken into custody and since then the applicant is in custody.

6 The learned counsel for the applicant submitted that the impugned judgment passed by the trial Court as well as the

Appellate Court is contrary to evidence. The prosecution has failed to establish the charge under Section 353 of IPC. There was no medical evidence to support the allegations of assault. It is further submitted that the applicant was acquitted for the offences punishable under Sections 332 and 504 of the IPC. The investigating officer in the cross-examination has not produced any documents to support the fact that the first informant was on duty. It is further submitted that primary ingredients to constitute the offence under Section 353 when the first informant being a public servant has been assaulted or criminal force is being used against him has not been established by the prosecution. It is further submitted that one of the witness has not supported the prosecution case and there was no independent evidence to convict the applicant for the said offence.

7 Learned APP submitted that there is no reason to interfere in the concurrent finding of these two Courts. There is sufficient evidence to establish the charge against the applicant. The injured person himself was the witness whose evidence could not be discarded by the defence. The first informant has categorically stated that he was on duty and was assaulted by the accused. It is submitted that both the Courts have arrived at the

conclusion that the prosecution has been able to prove its case against the applicant-accused and, therefore, no case is made out to interfere in this order in exercise of the revisional powers.

7 I have perused the evidence on record. The prosecution has examined the first informant who was purportedly the public servant and has been assaulted by the accused. He was cross-examined at the instance of the defence. The prosecution has also examined PW 2 Dayanand Swami who was working as a wireman in the office of MSEDCL. Both the witnesses have stated that the applicant-accused had visited the said premises and used criminal force and assaulted the first informant as well as PW 2. PW 3, however, did not support the prosecution case. PW 4 who is the investigating officer, has brought on record the manner in which the investigation was conducted and also placed on record the letter addressed to the medical officer. It is true that in the cross-examination of the said witness, it is brought on record that no documentary evidence is collected by him to show that the accused had given telephonic call to the first informant. He also did not produce the medical certificate.

8 On perusal of evidence of PW 1 and 2, it is apparent that the fact that the first informant was on duty has been established by the said witness. It is also proved that the accused had visited the office and assaulted PW 1 as well as PW 2. Both these witnesses are working in the MSEDCL as “Operator” and “Wireman”. There is no reason to doubt the veracity of evidence of these witnesses. In the cross-examination, the defence has not been able to discard the evidence of these witnesses. The evidence of these witnesses have been appreciated by the trial Court while arriving at the conclusion. It is also pertinent to note that the accused was acquitted for an offences punishable under Sections 332 and 504 of IPC. The reasons assigned by the trial Court reflects application of mind on the part of the said Court. The appeal preferred by this Court is also dismissed by the Sessions Court. Considering the nature of evidence which is brought on record and in the light of concurrent finding of both the Courts, there is no reason to set aside the impugned orders.

9 Learned counsel for the applicant lastly submitted that the applicant is in custody since 30th October, 2017, and after dismissal of appeal he has been taken into custody. It is submitted that there are no criminal antecedents against the applicant.

The incident had occurred in the year 2010. The applicant is married person having family. It is submitted that considering the fact that he is in custody since 30th October, 2017, the sentence imposed by the trial Court and confirmed by the Sessions Court be reduced to sentence which he has undergone.

10 The last submission advanced by the learned counsel for the applicant deserves to be accepted. The incident in question has taken place in the year 2010. Considering the fact that the incident had occurred on account of electricity power outage, in hit of passion, and also considering the fact that the applicant is in custody since 30th October, 2017, it would be appropriate to reduce the sentence to one which is already undergone by the applicant accused.

11 Hence, I pass the following order:

:: ORDER ::

- (i) Revision Application is partly allowed;
- (ii) The judgments and orders dated 6th January, 2016 passed by the learned Judicial Magistrate

First Class, Solapur and dated 30th October, 2017 passed by the learned sessions Judge, Solapur, are hereby confirmed. However, the sentence imposed by the trial Court and confirmed by the Appellate Court is reduced to one which is undergone by the applicant accused;

- (iii) The applicant may be released forthwith, if not required in any other case;
- (iv) Parties to act on an authenticated copy of this order.

(PRAKASH D. NAIK, J.)