

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.841/2018

Dharmesh s/o Gordhanbhai Savsani

...Versus...

The State of Maharashtra, through its P.S.O. Rawanwadi, Tahsil and District
Gondia and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri B.M. Kharkate, Counsel for petitioner
Shri Amit Chutke, APP for respondent no.1
Shri S.S. Rahimuddin, Counsel for respondent no.2

CORAM : R.K. DESHPANDE AND
ARUN D. UPADHYE, JJ.

DATE : 03/09/2018

1. The petitioner is convicted for the offence punishable under Section 366 read with Section 34 of the Indian Penal Code and is made to suffer rigorous imprisonment for a period of three years with fine of Rs.1,000/-, in default, to suffer simple imprisonment for a period of one month.

2. This petition is filed for quashing and setting aside the proceedings of Sessions Trial No.54/2011 and also to set aside the proceedings pending in Criminal Appeal No.5/2017 before the learned Principal District and Sessions Judge,

Gondia.

3. The question is whether it is permissible for this Court to quash the proceedings right from the sessions trial to the appellate proceedings once the conviction is already recorded for the offences which are non-compoundable. Reliance is placed upon the decision of the Apex Court in the case of Kailash Chand...Versus...State of Rajasthan, reported in 2018 ALL MR (Cri) 467 (S.C.) where the Apex Court in exercise of its jurisdiction under Article 142 of the Constitution of India quashed the conviction for the offences punishable under Sections 307 and 326 of the Indian Penal Code.

4. No doubt that the Apex Court has quashed the proceedings after the conviction was recorded but such a power available under Article 142 of the Constitution of India cannot be exercised by the High Court. The decision of the Apex Court, cited supra, cannot therefore be followed by this Court.

5. Once the conviction is recorded in the sessions trial, in our view, the power to quash the proceedings by invoking the jurisdiction under Article 226 of the Constitution of India is not available. Therefore, we dismiss the criminal writ petition.

Needless to say that the petitioner can persuade the appellate authority to take a lenient view in the matter taking in view the settlement arrived at between the parties.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)

Wadkar, P.S.

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