

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

926 CRIMINAL REVISION APPLICATION NO. 121 OF 2005

Sukhadev s/o Madhav Satpute
Age: 32 yrs, Occu: Driver,
R/o: Belepir Beed,
Taluka and District: Beed.

... Applicant

Versus

The State of Maharashtra
(Copy to be served on G.P. of
High Court Bench at Aurangabad)

... Respondent

...

Mr. Satej S. Jadhav, Advocate for Applicant
Mr. A.P. Basarkar, APP for Respondent/State

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**CORAM : V. K. JADHAV, J.
DATED : 1st FEBRUARY, 2019**

ORAL JUDGMENT:-

1. The applicant/accused has preferred this Criminal Revision Application against the judgment and order of conviction passed by the Judicial Magistrate, First Class, Beed dated 05.08.2002 in S.C.C. No. 2354 of 1998 convicting thereby the applicant/accused for the offence punishable under Sections 279, 337 and Section 353 of the Indian Penal Code and sentencing him to suffer S.I. for three months and to pay a fine of Rs.300/-, under Section 279 to suffer S.I. for three months and to pay a fine of

Rs.300/-, Section 337 to suffer S.I. for one month and to pay a fine of Rs.500/- and under Section 353 of the Indian Penal Code also confirmed by the learned Additional Sessions Judge, Beed by order dated 29.03.2005 in Criminal Appeal No. 26 of 2002.

2. The prosecution case is brief as under:

(I) On 09.09.1998 at about 1.40 p.m. PW Police Constable, namely, Parmeshwar Vitthalrao Ubale, PSI Patil and along with other staff members was on patrolling duty in Police Jeep on Pimpalner to Ghatsavali Road. At that time, one Jeep bearing Registration No.MH-23-B-1252 came from Wadvani side. In the said Jeep, many persons were traveling as passengers. PW Constable Ubale came on road in order to stop the said Jeep and also given signal to the driver of the Jeep to stop it. The driver of the said Jeep has tried to put Jeep on the person of Police Constable Ubale but thereafter, anyhow he stopped the vehicle. The passengers of the Jeep got down from the vehicle. PW Constable Ubale was preparing the list of passengers while sitting in the Jeep itself. At that time, suddenly the driver of the Jeep started his Jeep and proceeded further in a fast speed towards Beed road. PW Constable Ubale has requested the driver of the Jeep (the present applicant/accused herein) to stop but the applicant/accused did not listen and continued to proceed further. At the same time, PSI Patil along

with other members started chasing in a Police Jeep. The applicant/accused took his Jeep towards Jarud Phata and from there he was proceeding towards Bhavanwadi and thereafter again took the Jeep towards Jarud Phata. The police Jeep, all the while, was chasing the Jeep of the applicant/accused. Thus, PW Police Constable Ubale when noticed that, the applicant/accused was not in a mood to stop his Jeep, in order to stop the Jeep tried to take out the keys from ignition of the Jeep. Obviously, the applicant/accused resisted the said attempt and in that process, the Jeep fell down on the road side ditch. PW Constable Ubale and the applicant/accused sustained injuries on their persons in the said accident.

(II) On the basis of the complaint lodged by PW Police Constable Ubale Crime No. 91/1998 came to be registered in the concerned Police Station for the offence punishable under Sections 279, 337 and 353 of the Indian Penal Code and Sections 66(1)/192-A, 123/177, 130/177 of the Motor Vehicle Act. After due investigation, the Investigating Officer has submitted the charge-sheet before the Court. The learned Magistrate has recorded the plea of the applicant/accused, the applicant/accused has pleaded not guilty to the charge and claimed to be tried. It is the defence of the applicant/accused that, PW Constable Ubale demanded the Jeep for his personal use and since the applicant/accused denied for the same, he has been involved falsely in the case.

3. In order to substantiate the charges leveled against the applicant/accused the prosecution has examined three witnesses. After recording statement of that applicant/accused under Section 313 of the Code of Criminal Procedure and after hearing both the sides, the learned Judicial Magistrate, First Class, Beed, by order dated 05.08.2002 in SCC No.2354/1998, has convicted the applicant/accused for the offence punishable under Sections 279, 337 and Section 353 of the Indian Penal Code as detailed above. The said order came to be confirmed by the Additional Sessions Judge, Beed, by order dated 29.03.2005 in Criminal Appeal No. 26 of 2002.

4. The learned counsel for the applicant/accused submits that the speed is not only criteria to decide the rash and negligent driving. It has come in the prosecution evidence that, the applicant/accused left the spot hastily by driving his Jeep, even though PW Constable Ubale sat in the Jeep preparing the list of the passengers being carried in the Jeep illegally. The learned counsel submits that the applicant/accused might have apprehended the action and therefore, took away his Jeep in a fast speed from the spot without bothering even that the PW Constable Ubale sat in the Jeep. Learned counsel submits that the accident had

occurred only when PW Police Constable Ubale has attempted to remove the key of the Jeep from ignition. PW Constable Ubale has specifically deposed that, once he attempted to remove the key of the Jeep from ignition, the applicant/accused has resisted the said attempt and in that process, the Jeep left the road and fell down in the road side ditch. Had there been no attempt on the part of PW Police Constable Ubale there would not have been the accident as alleged. Learned counsel submits that the applicant/accused is not responsible for the said accident in any manner. He has not driven the vehicle in a rash and negligent manner. The PW Constable Ubale and even the other witnesses have not deposed that, the applicant/accused has driven in Jeep in a rash and negligent manner and thus caused the accident. So far as the conviction of the applicant/accused under Section 353 of the Indian Penal Code is concerned, the learned counsel submits that the Criminal Revision Application is of the year 2005 and applicant/accused came to be convicted by the Magistrate way back in the year 2002, after such a long gap, the applicant/accused may be sentenced to fine only under Section 353 of the Indian Penal Code.

5. The learned APP submits that there is sufficient evidence on record and the prosecution has succeeded in proving that the applicant/accused has driven his vehicle Jeep in a rash and negligent manner and cause the accident. PW Constable Ubale has made attempt to stop the vehicle, however, only because of the resistance offered by the applicant/accused, the said Jeep being driven by the applicant/accused, left the road and went in road side ditch. The learned Judge of the trial Court has rightly convicted the applicant/accused under Sections 279, 337 of the Indian Penal Code. So far as the charge under Section 353 is concerned, there is a sufficient evidence on record to show that the applicant/accused deter the public servants from discharging their official duties. The learned Judge has, therefore, rightly convicted him under Section 353, the applicant/accused has driven the vehicle for about 12 km and as such, he is not entitled for any leniency. There is no substance in this Criminal Revision Application and the Criminal Revision Application is liable to be dismissed.

6. On careful perusal of the record and proceedings particularly the evidence of the prosecution witnesses, it appears that there are no allegations against the applicant/accused to the effect that he had driven the

vehicle Jeep in a rash and negligent manner. The PW Constable Ubale has made an attempt to stop the Jeep by removing the keys of the Jeep from the ignition and since the applicant/accused has resisted the said attempt, the Jeep left the tar road and went in road side ditch. At the most, the said incident can be said as purely an accident. Had there been no attempt on the part of PW Constable Ubale to remove the key of the Jeep from the ignition, the accident would not have taken place. It is to be noted here that, the ignition of the Jeep is always towards the right side beyond the steering and if at all, PW Ubale has tried to remove the keys of the Jeep from the ignition, and if at all the applicant/accused has tried to resist in that process, it would be likely that the vehicle would leave the tar road. Anyway, the applicant/accused cannot be held responsible for having committed the offences punishable under Sections 279, 337 of the Indian Penal Code. The order of conviction and the sentence passed by the trial Court confirmed by the learned Additional Sessions Judge, Beed under Sections 279, 337 of the Indian Penal Code is thus liable to be quashed and set aside.

7. So far as, the conviction and the sentence passed under Section 353 is concerned, the prosecution has

succeeded in proving that, the applicant/accused was carrying the passengers illegally in a private vehicle Jeep. The PW Constable Ubale when he was preparing the list of the names of those passengers while sitting in the Jeep, in order to deter him from discharging his official duties, the applicant/accused took the Jeep from the said spot along with the PW Constable Ubale. Even though the Police Jeep started chasing the Jeep of the applicant/accused he did not stop the vehicle and accordingly, PW Constable Ubale and other Police staff members, who were on patrolling duty could not perform their duties. The learned Judge has, therefore, rightly convicted the applicant/accused under Section 353 of IPC. However, at the time of the said order of conviction and sentence the applicant/accused was hardly 30 years of age. At present, applicant/accused has crossed the age of 45 years. The applicant/accused remain on bail during the pendency of this Criminal Revision Application. Thus, considering the entire aspects of the case, I am inclined to reduce the term of imprisonment from six months to three months by maintaining the order of fine. Hence, I proceed to pass the following order:

ORDER

(I) The Criminal Revision Application is hereby partly allowed.

(II) The judgment and order of conviction passed by the Judicial Magistrate dated 05.08.2002 in SCC No. 2354/1998 confirmed by the Additional Sessions Judge, Beed, by order dated 29.03.2005 in Criminal Appeal No. 26/2002 is hereby quashed and set aside to the extent of convicting that the applicant/accused under Sections 279 and 337 of the Indian Penal Code sentencing thereby to suffer S.I. for three months and to pay a fine of Rs.300/- in default, S.I. for 15 days under Section 279 of IPC and to suffer S.I. for three months and to pay a fine of Rs.300/- in default, S.I. for 15 days for the offence under Section 337 of IPC is hereby quashed and set aside.

(III) The conviction of the applicant/accused under Section 353 of IPC passed by the Magistrate and confirmed by the Sessions Court stands confirmed. However, the sentence of six months and to pay a fine of Rs.500/- is hereby reduced. The applicant/accused, namely, Sukhadev s/o Madhav Satpute is sentenced to suffer S.I. for three months and to pay a fine of Rs.500/- in default, S.I. for one week under Section 353 of IPC.

(IV) The applicant/accused shall be taken into custody forthwith to serve the aforesaid sentence.

(V) The Criminal Revision Application is accordingly disposed of.

(V. K. JADHAV, J.)