

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

CRIMINAL REVISION APPLICATION NO.130 OF 2005

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Tukaram Chindha Thelari
age 44 years, Occ. Shepherd,
R/o Gandhi Nagar, Nandurbar. Petitioner.

VERSUS

1. The State of Maharashtra.
2. Khemya Damya Thelari,
 age 30 yrs.
3. Damya Ghama Thelari,
 age 52 years.
4. Gemya Damya Thelari,
 age 60 yrs.
5. Mehendra Trayambak Marathe,
 age 40 yrs
 All R/o Bhone, Tq. Nandurbar. ..Respondents..

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Advocate for Applicant : Mr S P Brahme
APP for Respondents : Mr B V Virdhe
Advocate for Respondent nos. 2-5 : Mr K C Sant

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CORAM : V.K. JADHAV, J.

Dated : 03 JANUARY 2019

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ORAL JUDGMENT :-

1. This is a criminal revision application
preferred against the judgment and order of acquittal

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passed by the learned Judicial Magistrate First Class, Nandurbar dated 3.2.2005 in RCC No.122 of 2002.

2. Brief facts, giving rise to the present revision application are as follows :-

a] As per the prosecution case, on 19.5.2002, around 01.30 to 02.00 p.m. the complainant Tukaram was returning back after visiting his relatives in another village, around 18.00 to 18.30 hours in the outskirts of the village when he reached banks of Patal river at that time, accused nos. 1 and 4 armed with iron rods assaulted him. As per prosecution case, accused no.1 abused him on the ground that as to why the complainant had lodged a false case against them. Lastly both the accused assaulted him below knee on his legs by iron rod. In consequence of which, the complainant had suffered grievous injuries. Furthermore, accused nos. 2 and 3 also assaulted him with the stick on his left fore arm and due to which the complainant had suffered swelling.

On the basis of the complaint lodged by PW 1

Tukaram crime no.68/2002 for the offences punishable under sections 325, 504, 506, 323 r/w 34 of the IPC came to be registered and after due investigation I.O. has submitted charge-sheet. The learned Judge of the Trial Court framed charge against the accused persons for the offences punishable under sections 325, 323, 504, 506, r/w 34 of IPC. All the accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and false implication. After recording their statements under section 313 of Criminal Procedure Code and after hearing both sides, the learned Magistrate acquitted the accused for the offences they charged. Hence, this criminal revision application.

3. Learned counsel for the applicant submits that, PW 1 Tukaram is injured witness. He has sustained injuries on his leg and also on the left hand fore arm. Even though, other prosecution witnesses have not supported the prosecution story, however, there was no reason for the learned judge of the trial

court to ignore his evidence. PW 1 Tukaram has specifically deposed that he was assaulted by the accused 1 to 4, inflicted injuries on his person with the help of iron rod and accused nos. 2 and 3 assaulted with the help of stick and caused injuries on his left fore arm. Learned counsel submits that, the judgment and order of acquittal thus deserves to be quashed and set aside and all the accused are liable to be convicted for the offences they are charged with.

4. Learned counsel for respondents/accused submitted that except P.W. 1 Tukaram, no other prosecution witness has supported the prosecution story in any manner. Even, the prosecution has not examined the Medical Officer and as such injury certificate is not proved. The learned Judge of the trial court has observed that PW 1 Tukaram is not reliable witness. There is no reason to interfere in the well reasoned judgment and order of acquittal passed by the trial court. There is no substance in this revision application.

4. I have also heard the learned APP for the respondent/State.

5. The interference with the order of acquittal passed by the trial Court is limited only to the following exceptional cases :-

(I) Order under revision suffers from glaring illegalities,

(II) Or has caused miscarriage of justice

(III) Or where the trial court has illegality shut the evidence which otherwise ought to have been considered

(IV) Or where the material evidence which clinches the issue has been overlooked

(V) Where the admissible evidence is wrongly brushed aside as inadmissible.

(VI) Where the acquittal is based on the compounding of the offence, which is invalid under the law.

6. In the case of *Vimal Singh vs. Khuman Singh*, reported in **1998 (7) SCC 223** the Supreme Court, while discussing the power of High Court in the matter of interference with the order of acquittal, by referring the decision of the Supreme Court in the case of *K. Chinnaswamy Reddy vs. State of Andhra Pradesh*, reported in **AIR 1962 SC 1788**, in para nos. 8 and 9 of the judgment, has made the following observations:-

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“8. The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer *res integra*, as the law in this regard is very well settled. Suffice it to refer to in this regard a decision of this Court in *K. Chinnaswamy Reddy vs. State of Andhra Pradesh* (AIR) 1962 SC 1788)

wherein it was held, thus :

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.....

Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

9. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the

trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304 Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."

7. In the instant case, PW 1 Tukaram has admitted that he had initially lodged a complaint against accused and it was compromised on the conditions that the accused should not follow his route and that he will not follow their route. He has further admitted that the accused had complied with the agreement. Further he could not state the exact date of the incident. In view of the previous enmity between the complainant and accused persons, the learned judge of

the trial court felt that there should have been independent corroboration. It appears that, PW 3 Suklal, PW 4 Morya and PW 5 Vana Zipa who are the independent witnesses have not supported the prosecution case in any manner. Even, the prosecution has not proved the injury certificate of the complainant. It thus appears that there is no corroboration to the evidence of the PW 1 Tukaram. Further PW 1 Tukaram has given certain admissions which goes to the root of the case. I do not find that the learned Judge of the Trial Court has overlooked the material evidence which clinches the issue or wrongly brush aside the admissible evidence as inadmissible evidence. I do not find that order under revision suffers from glaring illegality. In view of the above, and in the light of the observations made by the Supreme Court in case of Vimal (supra), there is no substance in this criminal revision application. Hence, following order.

O R D E R

1. Criminal Revision Application is hereby dismissed.

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2. Rule discharged.

(V.K. JADHAV, J.)

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The party in person makes a statement that he would withdraw the complaint bearing RCC No.308/2017 pending before the Chief Judicial Magistrate, Jalgaon.

Learned counsel for respondent no.1, on instructions, submits that, in that event, the respondent/original complainant Dilipkumar would withdraw his complaint bearing SCC No.2497/2014 pending before the JMFC, Jalgaon.

At the request of learned counsel for respondent no.1 and party in person, stand over tomorrow.