

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

CRIMINAL REVISION APPLICATION NO.39 OF 2004

...

Sanjay Munnalal Yadav
age 20 years, Occ. Auto driver,
R/o Govardhan Ghat, Nanded
Dist. Nanded.

...Applicant..
(Orig.complainant)

VERSUS

1. Lochansingh s/o Mansingh Karagir,
age 50 years, Occ. Private Service,
R/o Sahedpura,
Tq. & Dist. Nanded.
2. Tittusingh s/o Lochansingh Karagir,
age 32 years, Occ. Private Service,
R/o Sahedpura, Nanded,
Tq. & Dist. Nanded.
3. The State of Maharashtra,
Through Police Station Vazirabad,
Nanded, Dist. Nanded. ...Respondents..
[orig accused 1 and 2]

...

Advocate for Applicant : Mr Anuj A Fulpagar h/f P R
Katneshwarkar

Advocate for Respondent 1,2 : Mrs R M Mohale-
Chaudhari h/f Mr S S Choudhary

APP for Respondent 3 : Mr. S B Narwade

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CORAM : V.K. JADHAV, J.

Dated: March 29, 2019

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ORAL JUDGMENT :-

1. The applicant/original complainant has preferred this criminal revision application against the judgment and order of acquittal passed by the Chief Judicial Magistrate, Nanded dated 13.10.2003 in RCC No.78 of 2003 for the offences punishable under sections 323, 324, 504, 435 r/w 34 of Indian Penal Code.

2. Brief facts of the prosecution case giving rise to the present criminal revision application are as follows :-

a] On 30.11.2002 at about 02.45 p.m. when the informant was present in front of his house, at that time, three persons came there in an auto. They were the present respondents/accused. The informant was not knowing the name of the third person who was accompanying them. Respondents/accused inquired as to where was Harpalsingh Saloja. They had even threatened to the applicant-complainant that they would burn the motorcycle of the said Harpalsingh

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Saloja which has been parked near the house of the applicant-complainant. The applicant-complainant told them that he would call said Harpalsingh and they should not burn the motorcycle, however, the respondents/accused pushed him, slapped and abused him and started beating by fist blows. It further reveals from the prosecution story that respondents/accused Tittusingh caught hold of the applicant-complainant and his father respondent/accused Lochansingh assaulted him with a knife. In consequence of which the applicant-complainant has sustained bleeding injury on his left hand arm. Thereafter, both the respondents/accused set the motorcycle of Harpalsingh on fire. At that time, one Deepsingh and Prashantsingh intervened in the matter and separated them.

b] On the basis of the report submitted by the applicant-complainant on 30.11.2002, crime no.243/2002 came to be registered for the offences punishable under sections 323, 324, 504, 435 r/w 34 of Indian Penal Code. The investigating officer of the

concerned police station has carried out the investigation and after completion of the same submitted charge sheet against the accused persons. The learned Judge of the trial court has framed the charge on 12.6.2003 against respondents/accused for the offences punishable under sections 323, 324, 504, 435 r/w 34 of Indian Penal Code. The contents of the charge were read over and explained to the accused in Hindi. Accused pleaded not guilty to the charges and claimed to be tried.

3. The prosecution has examined in all six witnesses to substantiate the charges levelled against the accused. The defence of the accused is of total denial. After recording the statement of the accused u/s 313 of Criminal Procedure Code and, after hearing both the sides, the learned Chief Judicial Magistrate, Nanded, by judgment and order dated 13.10.2003 acquitted the respondents/accused under section 248 (1) of Cr.P.C. for the offences punishable under sections 323, 324, 504, 435 r/w 34 of the Indian Penal Code.

Hence, this criminal revision application preferred by the applicant/original complainant.

4. The learned counsel for the applicant/original complainant submits that, the evidence of PW 1 applicant-complainant Sanjay Munnalal Yadav, PW 4 Deepak Singh is consistent, trust worthy and reliable. Prosecution has examined PW 5 Dr. Vaijnath Khanapurkar at exh.28. On examination of the applicant-original complainant Sanjay, PW 5 Dr. Vaijnath Khanapurkar has found incised injury on the left fore arm of the applicant Sanjay which is simple in nature caused by sharp weapon. Learned counsel submits that medical evidence supports the allegations made by the applicant. PW 6 IO PHC Dattatraya Mundhe has seized the match stick and match box from the spot alongwith empty bottle of Petrol and kerosene. The spot panchnama has been proved wherein burnt condition of the motorcycle has been specifically noted. Learned counsel submits that, the trial court has ignored all this

evidence and acquitted the accused persons on the basis of some contradictions and omissions which are minor in nature.

5. Learned counsel for respondent nos. 1 and 2/original accused submits that all prosecution witnesses are highly interested witnesses. P.W. 1 applicant-complainant Sanjay Yadav was earlier running the auto-rickshaw of Harpalsingh and even he was residing beside the house of Harpalsingh. The applicant-complainant is very close to Harpalsingh. There are material omissions brought on record by confronting this witness with his earlier police statement. PW 1 Sanjay exaggerated his version. Learned counsel submits that, daughter of the respondent-accused Lochansingh was given in marriage to said Harpalsingh. She expired 15 days before this incident. Accused Lochansingh had filed a criminal case against Harpalsingh and others for having committed the murder of his daughter. Accordingly, crime under section 302 r/w 34 of IPC came to be

registered. Learned counsel submits that, relations between said Harpalsingh and respondent/accused Lochansingh were strained to the considerable extent. Learned counsel submits that, respondents/accused have specifically raised a defence that said Harpalsingh had used the present applicant-complainant as a tool for wrecking vengeance against the respondents-accused persons. Learned counsel submits that, so far as injuries sustained by the applicant-original complainant PW 1 Sanjay Yadav is concerned, PW 5 Dr. Khanapurkar has admitted in cross-examination that said injury can be a self inflicted injury. PW 4 Deepak Singh is not an independent witness. He is neighbour of the said Harpalsingh and all relatives of the Harpalsingh reside besides his house. Except these two interested witnesses, there are no independent witness to the incident in question. Learned counsel submits that, it is pertinent to note that the Investigating officer neither recorded the statement of said Harpalsingh whose motorcycle burnt in the alleged incident nor he has filed any complaint in respect of the incident about

his burnt motorcycle. Even, the weapon allegedly used in causing the injuries on the forearm of the applicant-original complainant P.W. 1 Sanjay Yadav has not been seized during the course of the investigation. Learned counsel submits that, the trial court has thus rightly given benefit of doubt to the respondents-accused. There is no substance in this criminal revision application and the criminal revision application is liable to be dismissed.

6. I have also heard the learned APP for the respondent no.3/State.

7. It is settled that interference with the order of acquittal passed by the trial Court is broadly limited only in certain cases i.e. :-

- (I) Order under revision suffers from glaring illegalities,
- (II) Or has caused miscarriage of justice
- III) Or where the trial court has illegally 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.

8. 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:-

"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."*

9. In a case **Subramaniam Vs. State of T.N. and another** reported in **AIR 2009 SC (Supp) 1493** in paragraph no.27 of the judgment the Supreme Court has made following observations :-

“27. Admittedly, a plastic bottle was found near the cot. It was seen by P.W. 3. However, his statement that he did not find any smell coming out from the mouth of the deceased is difficult to accept. He is not an expert. It is wholly unlikely that he having observed that death had already taken place, he would smell the mouth of the deceased. The possibility that having seen the bottle which admittedly at one point of time contained some poison, appellant's assuming that she had consumed poison and rushing to the house of the P.W. 3 who might have been in a position to make arrangement for shifting her to hospital cannot be ruled out. In so assuming, he might have committed a mistake but it is also difficult to arrive at a definite conclusion that only because a plastic bottle was found, appellant must have deliberately kept it so as to raise a false plea. We do not think that any such conclusion can be arrived at. If such a conclusion was arrived at, the same would amount to surmise and conjecture. The High Court was considering a judgment of acquittal; it set aside a part of the finding of the learned Sessions Judge. It could not have interfered with the judgment of acquittal if two views were possible. The judgment of the learned Sessions Judge, in our opinion, cannot be said to be wholly unreasonable or otherwise perverse. Circumstances brought on record by the prosecution, in our opinion, are not such which would lead to a definite conclusion that appellant and appellant alone had committed the offence. In the aforementioned situation, the High Court should have approached the case with some caution. ”.

10. It has been observed by the Supreme Court that the appellate Court should not interfere when two views are possible. The views taken by the trial court, those interfered by the appellate court cannot be said to be wholly unreasonable or otherwise perverse.

11. In the instant case, it appears that as observed by the learned Judge of the trial court PW 1 Sanjay Yadav applicant-complainant and PW 4 Deepak Singh, Sou. Rama Tiwari are the highly interested witnesses. PW 3 Sou. Rama Tiwari is not an eye witness to the incident. She had only witnessed the motorcycle on fire which is owned by Harpalsingh. She, however, admitted that a BJP party's office is situated in her house and people used to visit the office. She further admitted that there are other tenants residing in the said building and vehicle motorcycle on fire was noticed by her in burnt condition in the said building (vada). It is difficult to accept that except these two witnesses even though the place of incident is a crowded place, no other independent witness has witnessed the

incident. PW 1 Sanjay Yadav has admitted in his cross-examination that he was earlier running the auto of Harpalsingh and even he resides besides the house of Harpalsingh. He further admitted in his cross-examination that he has cordial relations with the said Harpalsingh. He further admitted that even motorcycle was totally burnt in the building (wada) of Sajjansingh and he did not call Harpalsingh. He has further admitted strained relations between Harpalsingh and respondent-accused Lochansingh on account of unfortunate death of daughter of Lochansingh. He further admits that crime under section 302 of IPC came to be registered in connection with death of daughter of respondent-accused Lochansingh. Said incident of murder of the daughter of accused Lochansingh who was the wife of Harpalsingh occurred 15 days prior to this incident. He has admitted in paragraph no.9 of his cross-examination that it is not mentioned in his report that accused pushed down the motorcycle and said motorcycle was parked besides his house.

12. On perusal of the medical certificate exh.29, the description of the injury is mentioned as incised injury on forearm, simple in nature caused by sharp weapon. PW 5 Dr. Khanapurkar has admitted in his cross-examination that the aforesaid injury can be a self inflicted injury. The learned Judge of the trial court on the basis of interested evidence of PW 1 Sanjay Yadav and admissions given by PW 5 Dr. Khanapurkar as to the self inflicted injury found much substance in the defence raised by the respondents/accused persons. The learned judge of the Trial Court has observed that possibility of false implication cannot be ruled out at the instance of Harpalsingh with the help of PW 1 Sanjay Yadav and the witnesses. It is also pertinent to note that said Harpalsingh has not come in picture nor he has lodged any complaint against the accused persons for the damage caused to his motor cycle.

13. So far as PW No.4 Deepak Singh is concerned, he has admitted that some 20 days prior to

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this incident, accused no.1 Lochansingh had filed a complaint against Harpalsingh and others. He has also admitted in his cross-examination that Harpalsingh is his neighbour and his both sisters reside beside the house of Harpalsingh. He has also admitted that the complainant Sanjay Yadav and his relatives reside there near the house of Harpalsingh. He and his family members are in visiting terms with the said Harpalsingh. Thus, considering the entire aspect of the case, the learned Judge of the trial court found that it would not be safe to rely on the testimony of the highly interested witnesses to convict the accused persons. So far as the earlier criminal case of the murder of the daughter of the accused Lochansingh is concerned, its a double edged weapon. There may be a possibility of false implication in this crime or possibility to assault and attack on near and dear one of Harpalsingh and to set on fire the motorcycle of Harpalsingh in the hit of anger, however, I do not think that the view the view taken by the trial court is only unreasonable or otherwise perverse.

14. Thus, considering the entire aspect of the case, and in view of the ratio laid down by the Supreme Court in the case of Vimal Singh Vs. Khuman Singh (supra), I do not find that the judgment and order of the acquittal suffers from any glaring illegality or has caused miscarriage of justice. The learned Judge of the trial court has acquitted the respondents/accused with the well reasoned order. There is no reason to interfere in the order. Prosecution has failed to prove the case against the accused persons beyond reasonable doubt. The learned Judge of the trial court has, therefore, rightly given the benefit of doubt to the respondents-accused persons. Hence, I proceed to pass the following order.

O R D E R

1. Criminal Revision Application is hereby dismissed.
2. Rule discharged.

(V.K. JADHAV, J.)

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