

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

CRIMINAL APPLICATION NO. 162 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 110 OF 2019

(Sunil S/o Bhaiyyaji Dhole Vs. State of Maharashtra, through Range Forest Officer,
Bramhapuri, Tah. Bramhapuri, Dist. Chandrapur)

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

Court's or Judge's orders.

Shri Nitin R. Bhishikar, Advocate for the applicant.
Shri S.B. Bissa, APP for the State.

CORAM : S.M. MODAK, J.
DATE : 27TH MAY, 2019.

Heard Shri Bhishikar, learned advocate for
the applicant and Shri Bissa, learned Additional
Public Prosecutor.

Additional Sessions Judge, Chandrapur
vide order dated 14th May, 2019 confirmed the
conviction and sentence of the applicant for the
offence punishable under section 26(1) of Indian
Forest Act, 1927. This part of the order is challenged
by the applicant/accused. The applicant was
acquitted and his conviction for the offence
punishable under Section 42 of Indian Forest Act was
set aside. This order came to be passed in Criminal

Appeal No. 62 of 2016 as preferred by the applicant.

The applicant was convicted for both these offences by the Court of Judicial Magistrate First Class, Bramhapuri in Regular Criminal Case No. 15 of 2011. When the learned Additional Sessions Judge delivered the judgment, the applicant was not taken into custody but he was directed to appear before the trial Court on or before 27th May, 2019. He was directed to deposit Rs.23,000 being remaining amount of compensation from the total amount of compensation ordered by the trial Court. The applicant was further directed to receive the sentence. Prior to 27th May, 2019, the applicant has preferred this revision application before this Court. Now he is praying for suspension of sentence.

The applicant is ready to deposit the remaining amount of compensation. The copies of evidence were not filed on record. With the assistance of both the sides from the copies of evidence available with the applicant, I have gone through the evidence of P.W.No.1 who is the forest officer who conducted the investigation and filed chargesheet. He could not be made available for cross-examination as he expired. P.W.No.2 Ganesh Rahangadale is the forest guard. He is the eye witness. Applicant claims that there is inconsistency in between the evidence of P.W.No.1 and P.W.No.2.

According to P.W.No.1, the trees were already cut on 11th October, 2010. He visited the spot on the basis of information given by the Sarpanch. On the next date i.e 12th October, 2010, he carried out the panchnama, whereas according to P.W.No.2 Ganesh he saw the accused cutting the branches of the tress on 12th October, 2010 at 10 a.m. Two panch witnesses were also examined.

Applicant claims that the First Appellate Court has not considered this variance and has not given benefit to the applicant. The applicant was on bail during the trial and during appeal. He claims to be permanent resident of Bramhapuri. He undertakes to remain in person during the hearing of criminal revision.

The applicant should be given an opportunity to challenge the judgment of the First Appellate Court. Even though he was not taken into custody, the direction needs to be given to the trial Court to release the applicant on bail. Applicant can be directed to appear before the trial Court on 3rd June, 2019 and to deposit of Rs.23,000/- before the trial Court. Hence, I pass the following order.

ORDER

- i. Application is allowed.
- ii. Applicant is directed to appear before the Court of Judicial Magistrate First Class, Bramhapuri

on 3rd June, 2019.

iii. Applicant is further directed to deposit Rs.23,000/- being remaining amount of compensation before the Court of Judicial Magistrate First Class, Bramhapuri on or before 3rd June, 2019.

iv. The trial Court is directed to release the applicant on accepting personal bond and surety bond of Rs.25,000/-.

v. Applicant is directed to attend the hearing of revision proceeding without fail.

vi. Hamdast is granted.

JUDGE