

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.139 OF 2002

Vivek Vasudeo Mehatani. ..Applicant.

v/s.

The State of Maharashtra. ..Respondent.

Mr. Shirish Gupte, Sr. Counsel i/b. Ms. Supriya Kak, advocate for applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 23, 2020.

P. C. :

1 Heard the learned Senior Counsel for the applicant and learned APP for State.

2 The applicant herein impugns the Judgment and Order dated 20/2/2002 passed by learned Special Judge, Greater Mumbai thereby confirming the Judgment and Order dated 31/7/1999 passed by learned Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai. The applicant is prosecuted for the offence punishable under section 171(f) as

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well as 419 of the Indian Penal Code.

3 It was the case of the prosecution that the applicant had tried to cast vote in the name of his brother in the elections to the Loksabha held in the year 1996 at polling booth No. 73 at Malbar hill constituency. Elections were held on 6/5/1996. He had collected ballot paper however, when he went for casting his vote, the polling officer had noticed that already there was an ink impression on his index finger and therefore, the matter was reported to the police and the applicant was prosecuted.

4 The prosecution had adduced evidence to show that the accused-applicant had applied for the ballot paper in order to vote in the name of his brother who was living. That the prosecution had also proved that the accused had impersonated his brother to cast vote at the general election.

5 Prosecution examined 6 witnesses to bring home guilt of the accused. That prosecution examined polling officers. It was proved by P.W. 2 Chandrakant Adam that the accused had signed on the counterfoil and had obtained ballot paper. It was P.W. 4 Vaishali Desai who had noticed ink impression on the finger of the accused and thereafter, polling officer had taken

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him to P.W. 1 Mr. Manjrekar, who had set the law into motion.

6 P.W. 6 Dilip Palande was the Investigating Officer, who had investigated Crime No. 220 of 1996 and had recorded supplementary statement of the complainant, verified electoral roll and had also recorded statement of the P.W. 5 Arun Madavrao Salunke, PSI, who was at bandobast duty. Despite the fact that witnesses were subjected to lengthy cross-examination, evidence of the witnesses could not be shattered. Hence, learned Magistrate had rightly convicted accused for the offence alleged against him.

7 The Appellate Court has assigned justifiable reasons for confirming the Judgment of the learned Magistrate. Hence, it would not be necessary to interfere with the findings recorded by both the Courts.

8 Learned Senior Counsel submits that the applicant was more than 30 years old on the date of the incident. At present, he is 60 years old. He remains terminally ill and is suffering from various old age ailments and that he is incapacitated.

9 In any case, revision was admitted on 5/4/2002. Conviction is of the year 1999. In view of this, sentence

imposed upon the applicant deserves to be modified in the interest of justice. Punishment contemplated for section 171 of the Indian Penal Code is imprisonment of either description for a term which may extend to one year or with fine, or with both. Punishment contemplated for section 419 of the Indian Penal Code is imprisonment of either description for a term which may extend to three years, or with fine, or with both.

10 In view of this, following order is passed :

ORDER

- (i) The Revision Application is partly allowed.
- (ii) The Order of conviction passed by both the Courts below is hereby confirmed. However, substantive sentence is quashed and set aside.
- (iii) In lieu of the substantive sentence, the applicant is sentenced to pay fine of Rs. 10,000/- for the offence punishable under section 171(F) of the Indian Penal Code. The applicant is sentenced to pay fine of Rs. 15,000/- for the offence punishable under section 419 of the Indian Penal Code.
- (iv) The fine amount to be deposited within 4 weeks from

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today.

(v) After payment of fine amount, bail bond of the applicant stands cancelled.

11 The Revision Application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]