

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

CRIMINAL APPEAL NO.410/2020
AND
CRIMINAL APPLICATION (APPA) NO.421/2020

Prabhakar S/o Hari Asutkar

-VERSUS-

State of Maharashtra through P.S.O. P.S. Gadchiroli, Tah. and District Gadchiroli.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.M. Tahaliyani, Advocate for appellant
Ms. G.R. Tiwari, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI, J.
DATE : OCTOBER 19, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The appellant was convicted by the Judicial Magistrate First Class, Gadchiroli for the offence punishable under Section 279, 304 (A) of the Indian Penal Code and Section 184 of the Motor Vehicle Act. The said order of conviction was challenged before the Sessions Court by way of Criminal Appeal, however, it was dismissed. The convicted accused desirous of challenging the said order of dismissal, has filed present appeal.

3. There is not provision of second appeal and a

2

revision would lie against the impugned order. In this regard, the appellant has filed p. 10/2020 requesting to convert the present appeal into revision.

4. Having regard to the procedural aspects that the convicted accused ought to have filed revision and in view of his request to that effect, this appeal is converted into criminal revision. Office to take note thereof.

5. Issue notice to the respondent, returnable after **four weeks**. Ms. G.R. Tiwari, learned Additional Public Prosecutor waives service of notice for respondent.

Criminal Application No. ____/2020

1. The Court of Judicial Magistrate First Class, Gadchiroli has convicted the petitioner/accused for the offence punishable under Sections 304(A) and 279 of the Indian Penal Code along with offence under Motor Vehicle Act. The maximum punishment awarded is to undergo rigorous imprisonment for one year and total fine of Rs.12,000/- plus compensation of Rs.50,000/- has been imposed. The said order of conviction was confirmed by the Sessions Court by way of dismissing the appeal. The learned

3

counsel for the appellant submitted that he has no clear instructions as to whether fine amount has been deposited or not.

2. The petitioner is seeking suspension of execution of sentence in terms of Section 389 (1) of the Code of Criminal Procedure. The substantive sentence is merely of to undergo rigorous imprisonment for one year. The petitioner is in jail from date of dismissal of appeal i.e. from 22/09/2020. If the execution of sentence is not suspended and revision is not decided in proximity, the very purpose of filing revision itself would frustrate. Having regard to the quantum of sentence of one year, it is desirable to suspend the execution of sentence till disposal of revision petition. Further, it is to be ensured that the appellant shall deposit the entire fine amount of Rs.12,000/- and compensation of Rs.50,000/- if not, already deposited. The order of suspension will have effect only on confirmation about deposit of fine and compensation amount.

3. At this stage Shri R.M. Tahaliyani, learned counsel for appellant, submitted that he has received revised instructions that entire fine and compensation amount of Rs.62,000/- has been deposited.

4

4. In view of above the execution of sentence awarded to the Appellant vide judgment dated 09/04/2019, passed by the Judicial Magistrate, Gadchiroli in R.C.C. 666/2017 and confirmed by the Criminal Appeal No.39/2019 is suspended and appellant be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one surety of like amount. The release of accused on bail is subject to confirmation of deposit of fine and compensation amount.

5. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

R.S. Sahare