

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

CRIMINAL REVISION APPLICATION NO.235 OF 2011

1. Mangala w/o Pradip Patil
Age: 30 years, Occu.: Service,
R/o. Vithai Nagar, N-2,
CIDCO, Aurangabad.
2. Pradip s/o Popatrao Patil
Age: 36 years, Occu.: Service,
R/o. Vithai Nagar, N-2,
CIDCO, Aurangabad. ..Applicants

VERSUS

- . The State of Maharashtra ..Respondent

Advocate for Applicants : Shri Nilesh S. Ghanekar
APP for Respondent : Shri S.D.Ghayal

CORAM : M.G.SEWLIKAR, J.

DATE: 16th December, 2021

ORAL JUDGMENT :-

1. This revision is preferred by the applicants against the Judgment and order passed by the learned Additional Sessions Judge-4, Aurangabad in Criminal Appeal No.240 of 2010 dated 3rd September, 2011, whereby the Judgment and order passed by the learned Judicial Magistrate First Class (10th Court), Aurangabad in RCC No.1284 of 2006 dated 22nd October, 2010 has been modified. The learned Magistrate had awarded simple imprisonment of one year and fine of Rs.1,000/- each for the

offence punishable under Sections 353, 332, 506(II) read with Section 34 of the Indian Penal Code. The learned Additional Sessions Judge partly allowed the appeal and set aside the conviction under Sections 353, 332, 506 (II) read with Section 34 of the Indian Penal Code and convicted the applicants under Sections 352, 323 read with Section 34 of the Indian Penal Code. The learned Additional Sessions Judge released the applicants on executing bond of good behaviour of Rs.10,000/- for a period of one year in terms of Section 4(1) of the Probation of Offenders Act, 1958.

2. Facts in brief are that the Informant - Shri Balaji Dharmaji Bodawar was working as Senior Clerk in the Industrial Training Institute (ITI), Gevrai, Dist.Beed and was sent on deputation to ITI, Bhadkal Gate, Aurangabad since 9th August, 2006. On 19th August, 2006 at about 01:30 p.m., when the informant Balaji alongwith his friend Sunil Choudhari was taking tea in the canteen, a Peon by the name of Kalim mentioned to him that the Deputy Director Shri Jaiswal had called him in the cabin. When he went in the cabin of Shri Jaiswal, he saw applicants alongwith 4 to 5 unknown persons. At that time, applicants said to the informant as to when informant was transferred to Gevrai and why he had come to Aurangabad. They threatened to kill him.

Thereafter, some of the accused with the help of 4 to 5 boys blackened the face and shirt of the informant. Thereafter, informant went into another room and closed himself in the room till the applicants left the office. Thereafter, the informant lodged the report in City Chowk Police Station, Aurangabad.

3. Investigation was carried out. After completion of the investigation, charge-sheet came to be filed. Charge was framed and read over to the applicants. They pleaded not guilty to it and claimed to be tried. Their defence under Section 313 of the Code of Criminal Procedure and in cross-examination is that applicant No.1 - Mangala Pradip Patil had filed a complaint against the informant on account of which informant was transferred to Gevrai. This false FIR has been filed to take revenge on applicant No.1.

4. I have heard Shri N.S.Ghanekar, learned counsel for the applicants.

5. Shri Ghanekar, learned counsel submits that both the learned trial Court and the learned Appellate Court misread the evidence. The admissions given by the witnesses have not been considered by the learned trial Court and the learned Appellate

Court as well. Both the Courts below did not appreciate the fact that applicant No.1 – Mangala Pradip Patil had filed a complaint against the informant on account of which informant was transferred from Aurangabad to Gevrai. This FIR has been filed just to settle score with applicant No.1. Therefore, conviction needs to be set aside and applicants need to be acquitted of all the offences. Only eye witness is Shri Premkumar Jaiswal. Despite being a public place, prosecution could not collect evidence of any independent witness.

6. Shri S.D.Ghayal, learned APP for the respondent-State supported the Judgments of the Courts below.

7. On perusal of the Judgments of the learned Appellate Court and learned Judicial Magistrate First Class, it is seen that both the Courts have correctly appreciated the evidence tendered. Informant was sitting in the cabin of Shri Jaiswal (PW-3). The testimony of the informant is cogent. Nothing could be extracted from his testimony so as to discredit it. Similarly, testimony of Shri Jaiswal (PW-3) is also confidence inspiring. Nothing is brought on record to show that Shri Jaiswal (PW-3) had any axe to grind against the applicants. He had no reason to depose falsely against the applicants. His testimony is creditworthy. In

this view of the matter, I do not find any infirmity in the appreciation of the evidence by the learned Appellate Court and the learned trial Court. Appeal is, therefore, devoid of any substance. Hence, it is dismissed.

(M.G.SEWLIKAR)
JUDGE

SPT