

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 27 OF 2021

ANTHONY XAVIER JULIAN VIEGAS,
48 years,
r/o Sebastian Building,
Opp KTC Bus Stand,
Marcel – Goa.

.... Petitioner.

Versus

1. STATE OF GOA
Through Public Prosecutor,
High Court of Bombay at Goa.

2. THE POLICE INSPECTOR,
Old Goa Police

.... Respondents.

Mr. Vibhav R. Amonkar, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor of the Respondents.

Coram:- NITIN W. SAMBRE, J.

Date:- 7th April 2021.

P.C.

The petitioner accused came to chargesheeted for offence punishable under Section 302 and presently facing Sessions Case No. 9/2013 pending on the file of Additional Sessions Judge, Panaji.

2. The prosecution in the said proceedings moved an application Exhibit D-115 seeking re-examination of Pw.17 which came to be allowed vide impugned order dated 16.02.2021 as such this petition by the accused.

3. Learned Counsel for the petitioner Mr. Amonkar, while inviting attention of this Court to the provisions of scheme of section 53, 54 of the Evidence Act would urge that the petitioner accused has not come out with a defence of previous good character. In such an eventuality an attempt on the part of the prosecution to demonstrate his conviction under Criminal Case No. 99/S/2008/B under Section 326 of the IPC will be of hardly any consequences. According to him bad character of the petitioner is not relevant unless the petitioner himself gives evidence of good character. In rebuttal of such evidence of good character of the accused it is open for the prosecution to give evidence of bad character. As such, according to him, the Court below committed an error in passing the order impugned as the accused has not given any evidence or has no intention to give evidence of his good character. That being so, according to him, the order impugned is not sustainable and is liable to be quashed and set aside. He would then invite attention of this Court to the provisions of Section 54 so as to claim that there is presumption of innocence of an accused and in that

eventuality the Court below committed an error in allowing the application by permitting the prosecution to rely on the judgment of conviction of the petitioner accused for the limited purpose of proving the explanation given by Pw.3 for giving supplementary statement to the Police.

4. Shri Faldessai, learned Additional Public Prosecutor would support the order impugned. According to him, explanation 1 to Section 54 has been rightly relied on by the Court below and in any case the scrutiny of evidence based on the provisions of Section 54 or otherwise cannot be gone into at this stage of the proceedings. He would claim that the permission is granted to rely on the judgment passed by the Magistrate, Ponda in a case of conviction of the petitioner under Section 326 of the IPC is only for limited purpose. As such according to him the petitioner's right to canvass his claim based on the provisions of Section 354 of CrPC as regards his defence of good character is not hampered or encroached on. He sought dismissal of the petition.

5. Considered rival submissions. The factum is, while allowing the Exhibit D-115 the learned Additional Sessions Judge has taken shelter of explanation 1 to Section 54 of the Evidence Act.

Section 54 of the Evidence Act provides for relevancy of the previous bad character of an accused in a criminal proceedings. Said provision prescribe that, such fact of bad character is irrelevant unless the evidence is given by the accused that he is a person of good character. Explanation 1 is in the form of an exception to what has been provided in the main Section. As per this explanation if the bad character of any person is itself a fact in issue the provisions of Section 54 will not be considered to the benefit of accused person. The petitioner has drawn support from the judgment of this Court at Aurangabad Bench in Criminal Confirmation Case N. 2 of 2014 with Criminal Appeal No. 77 of 2015 in the case of ***State of Maharashtra v/s. Anil Jagannath Pawar*** so as to substantiate his claim of not raising the defence of good character and as such the non-availability of the plea under Explanation to Section 54 to the prosecution side.

6. However, it is noted that while passing the order impugned the Court below has permitted the prosecution to rely on the judgment of conviction of the petitioner only for the purpose of proving the explanation given by Pw.3 so as to give supplementary statement to the Police. It appears that the Sessions Judge was sensitive to the ingredients of Section 54 of the Evidence Act and privileges available to the petitioner accused. Hence, protection guaranteed

under said section are not encroached upon by way of impugned order.

6. As such, support drawn from the aforesaid judgment will be of hardly any assistance at this stage. Keeping the right of the petitioner intact to canvass his privilege as provided under Section 54 at the time of hearing at the Sessions trial, in my opinion, at this stage of the proceedings no interference is called for in the order impugned. The petition as such stands dismissed.

NITIN W. SAMBRE, J.

msr.