

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 11 OF 2021

Pratap Jaganath Mohite

... Applicant

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Prosper D'souza through Legal Aid for Applicant.

Mr. Amit Palkar, A.P.P. for Respondent No.1-State.

Mr. Mahendra Deshmukh for Respondent Nos.2 to 6.

CORAM : A.S. GADKARI, J.

DATE : 15th January 2021.

PC. :

By the present Revision under Section 397 of the Criminal Procedure Code, the applicant/original complainant has impugned Judgment and Order dated 8th December 2010 passed by the learned Judicial Magistrate, First Class, Kadegaon in Regular Criminal Case No. 35 of 2008, acquitting the respondent Nos.2 to 6 from the offences punishable under Section 143, 147, 148, 324, 379, 504 read with Section 149 of the Indian Penal Code and Judgment and Order dated 8th September 2017 passed by the learned District Judge-3 and Additional Sessions Judge, Sangli in Criminal Appeal No. 79 of 2011 dated 8th September 2017, dismissing the appeal and confirming the Judgment and Order passed by the learned J.M.F.C., Kadegaon dated 8th December 2010.

2. Heard Mr.D'souza, learned counsel for the applicant, Mr.Palkar, learned A.P.P for the respondent No.1-State and Mr.Deshmukh, learned counsel for the respondent Nos.2 to 6. Perused record annexed to the Revision Application.

3. It was the case of the prosecution that, on 14th March 1997 at about 8.30 am, the respondent Nos.2 to 6 assaulted applicant with fists, kick blows and stones. The said incident was witnessed by PW-2 to 5, who were independent witnesses. The said incident was also witnessed by PW-7 i.e. the father of the applicant. A Crime bearing C.R. No.18 of 1997 against the respondents for the offence punishable under Section 143, 147, 148, 324, 394, 504 read with Section 149 of the Indian Penal Code was registered with Kadegaon Police Station, District Sangli. On completion of investigation, Chargesheet came to be filed before the Trial Court by the Investigating Officer.

4. Trial Court framed charge below Exhibit-54 against the respondent Nos.2 to 6. The contents of the charge were read-over and explained to them in vernacular, to which they denied, pleaded not guilty and claimed to be tried. The defence of the respondent Nos.2 to 6 was of total denial and implication in a false crime. The prosecution examined in all 8 witnesses in support of its case to substantiate charges against the respondent Nos.2 to 6. The Trial Court after recording evidence and hearing the learned

Advocates for the respective parties was pleased to acquit respondent Nos.2 to 6 from the charges framed against them by its impugned Judgment and Order dated 8th December 2010.

5. In an appeal preferred by the applicant bearing Criminal Appeal No. 79 of 2011, the Appellate Court after re-appreciating the entire evidence available on record was pleased to dismiss the same by its impugned Judgment and Order dated 8th September 2017.

In the premise, the applicant has approached this Court under Section 397 of the Criminal Procedure Code by way of Criminal Revision Application.

6. Mr.D'souza, learned counsel appearing for the applicant submitted that, the Trial Court has failed to take into consideration the testimony of applicant (PW-6) coupled with the admissions given by Medical Officer (PW-8) in its proper perspective. He submitted that, the father of applicant, i.e. PW-7, has corroborated the version of the applicant of assault by the respondent Nos.2 to 6 and the said vital aspect has been lost sight of by both the Court's below. He submitted that, this Court therefore may take into consideration the said facts which may entail reversal of acquittal of the respondent Nos.2 to 6. He therefore prayed that the present Revision Application may be allowed.

7. Mr.Deshmukh, learned counsel appearing for the respondent Nos.2 to 6 vehemently opposed the present Revision and submitted that, both the Court's below have properly appreciated the evidence on record and have not committed any error or irregularity in acquitting the respondent Nos.2 to 6. He therefore prayed that, the present Revision may accordingly be dismissed.

8. At the outset, it is to be noted here that, the PW Nos.2 to 5 who are independent witnesses have resiled from their original statements recorded under Section 161 of the Criminal Procedure Code and did not support prosecution case. They were therefore declared hostile by the learned public prosecutor appearing therein. The said witnesses have been cross examined at length by the concerned public prosecutor. However, nothing fruitful is brought on record which would benefit the applicant. PW-7 i.e. father of the applicant is an interested witness, who supported case of the applicant.

Dr.Neminath Upadhye (PW-8), Medical Officer in his cross-examination has admitted that, most of the injuries suffered by the applicant are possible if a person falls down on surface. It is important to note here that all the 6 injuries which PW-8 noticed at the time of clinical examination of the applicant, were minor in nature and are possible by a fall. Assuming for the sake of argument, even if one of the respondents in the melle has pushed the

applicant, causing him to fall on surface, then also taking into consideration the nature of injuries suffered by the applicant, the provisions of Section 324 of the Indian Penal Code may not be attracted. Record further indicates that, after the alleged incident of assault, the applicant went to Primary Health Centre at Kadegaon for treatment. After taking treatment, he went to Vita for his work and after returning therefrom in the evening he lodged the present crime. PW-5 has admitted that, Kadegaon Police Station is situated in front of Primary Health Centre, Kadegaon, where the applicant took medical treatment immediately after the alleged assault. The applicant has no offered any explanation for not lodging complaint with the police immediately at the first instance. This conduct of the applicant creates doubt about his *bonafide* in the mind of the Court.

9. After perusing Judgments of both the Court's below minutely, this Court is of the considered view that, the Trial Court at the first instance and the Appellate Court while re-appreciating the evidence on record has not committed any error or irregularity in appreciating it. There is no error either in law or on facts in both the Judgments passed by the Court's below.

10. The Revision Application being *dehors* of merits is accordingly dismissed.

[A.S. GADKARI, J.]