

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

CRIMINAL REVISION NO. 90 OF 2020

Shrikrushna S/o Babulalji Tawari,
Aged about 54 years, Occ. Labourer,
R/o Sharad Nagar, Shivar,
Tah. & District - Akola.

.... **Applicant**

- Versus -

State of Maharashtra,
through P.S.O., Police Station,
Civil Lines, Akola,
Tq. & Dist. Akola.

.... **Respondent**

Mr. A. S. Siddiqui, Advocate h/f Mr. A. M. Tirukh, Advocate for the
applicant
Mr. N. S. Rao, A.P.P. for the State/respondent

**CORAM : ROHIT B. DEO, J.
DATED : 4th August, 2021.**

ORAL JUDGMENT

Heard.

2. Admit.

3. With consent, the revision is finally heard at the stage of
admission.

4. The applicant is assailing the judgment dated 21-6-2018 rendered by the Judicial Magistrate First Class, Court 8, Akola in Summary Criminal Case 56/2012 whereby the applicant is convicted for offence punishable under Section 354 of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs. 10,000/-, is further convicted for the offence punishable under Section 509 of the IPC and sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs. 30,000/- and is further convicted for the offence punishable under Section 506 of the IPC and sentenced to suffer rigorous imprisonment for one year.

5. Mrs. "S" is happily married to P.W. 1 Mr. "R". She was aged 45 years as on the date of incident. P.W. 3 is her son.

6. Mrs. "S" lodged report with Police Station, Civil Lines, Akola on 4-10-2011 alleging that on 3-10-2011, the applicant, who is the owner of neighbouring grocery shop, approached her when she was washing utensils and tried to handover a chit. Mrs. "S" refused to accept the chit and the applicant threw the same on her person and left muttering "I love you". According to Mrs. "S", the next

morning, the applicant made obscene gestures and warned her not to disclose the contents of the chit to anyone. Mrs. “S” alleged that even prior to the incident, the applicant was flirting with her on many occasions and used to throw small pebbles on her person. Mrs. “S” alleged that since eight days prior to the incident, the applicant is indulging in making obscene gestures.

7. On the basis of report, Civil Lines Police Station, Akola registered offences punishable under Sections 354, 506 and 509 of the IPC. Culmination of the investigation led to submission of final report. The applicant abjured guilt. Trial ensued in which the prosecution examined Mrs. “S”, her husband, her son, a neighbour and the Investigating Officer. The defence appears to be that a false complaint is lodged since Mrs. “S” purchased grocery on credit and she was not inclined to pay the applicant-accused the amount due. The applicant, however, did not step into the witness box.

8. The learned Magistrate and the appellate Court have on the basis of contents of the chit and the other material on record, held the accused guilty of offences punishable under Sections 354, 506 and 509 of the IPC.

9. In exercise of revisional jurisdiction, I am not inclined to undertake a microscopic examination of the evidence on record. However, I find from the evidence on record that there is no material, except a bald general statement that some threat was issued, to bring home the charge under Section 506 of the IPC. The *sine qua non* ingredients of Section 506 is criminal intimidation as defined in Section 503 of the IPC. A bare perusal of Section 503 would reveal that the threat must be with intent to cause injury either to person, reputation or property and the intent must be to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do. All that is said in the evidence is that the applicant threatened Mrs. "S" that the contents of the chit should not be disclosed. The nature of the threat, the words used, whether the words used were such as would cause alarm and whether the complainant/informant as a fact was alarmed, are aspects within the realm of speculation. I have no hesitation in holding that the conviction recorded under Section 506 of the IPC is unsustainable.

10. Insofar as charge under Sections 354 and 509 of the IPC

is concerned, cumulative effect of the evidence on record, particularly, the version of Mrs. “S”, would suggest that the view concurrently taken is a plausible view. Mrs. “S” is a married woman, aged 45 years and the very act of throwing a chit on her person which professes love for her and which contains poetic verses, *albeit* extremely, purely written is sufficient to outrage the modesty of a woman. The modesty of a woman is her most precious jewel and there cannot be a straitjacket formula to ascertain whether modesty is outraged. Be that as it may, I have no reason to disbelieve the evidence of Mrs. “S” that the applicant threw a chit on her person containing objectionable material. No fault can be found with the concurrent finding that the applicant did outrage her modesty. The evidence of Mrs. “S” that the applicant used to flirt, make gestures like pouting of lips, on occasions used to hit her with small pebbles is confidence inspiring and in exercise of revisional jurisdiction, I would be loathe to disagree with the concurrent findings of Courts below based on appreciation of evidence on record.

11. I find no reason to interfere with the conviction recorded under Sections 354 and 509 of IPC.

12. The incident occurred in 2011. While the applicant did outrage the modesty of Mrs. “S” by throwing on her person a chit professing his love and by certain acts and gestures like pouting of lips and throwing small pebbles, the applicant deserves a chance to reform and further incarceration is not likely to be of any avail. I have noted that the applicant has already undergone 45 days of incarceration and considering the date of the incident or commission of offence, as the provisions of law stood then, there was no minimum sentence provided for offence punishable under Section 354 of the IPC. It is only by the 2013 amendment that minimum sentence is provided. I therefore find it appropriate to modify the sentence of imprisonment imposed for offences punishable under Section 354 and 509 of the IPC to the period already undergone.

13. The trial Court, in addition to imposing of sentence of imprisonment, directed the applicant to pay fine of Rs. 10,000/- and Rs. 30,000/- for offences punishable under Sections 354 and 509 of the IPC respectively. The trial Court further directed that Rs. 35,000/- be paid to the informant/victim as compensation under Section 357(1)(b) of the Code of Criminal Procedure. The amount

of fine is enhanced to Rs. 50,000/- for offence punishable under Section 354 of the IPC and Rs. 40,000/- for offence punishable under Section 509 of the IPC. In addition to the amount of Rs. 35,000/- which is to be paid to the victim/informant by virtue of the trial Magistrate's order, the additional fine of Rs. 50,000/- imposed by this judgment, shall also be paid to the informant/victim.

14. The applicant shall deposit the fine in the trial Court within the next 15 days and shall file in the Registry an affidavit of compliance.

15. The trial Magistrate shall ensure that the victim/informant is made aware of this judgment, and that the enhanced fine is duly paid to her, and if, due to death or any other reason, the victim/ first informant is not available, to her legal heirs.

16. List this disposed of revision under the caption "for reporting compliance" after three weeks.

JUDGE

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