

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

Criminal Revision Application 118/2020

Ashok s/o Budhram Neware,
Aged about 55 years, Occ.-Service,
R/o.- near Gas Godown, Khat Road, Bhandara-441904. Applicant

-Versus-

State of Maharashtra,
Through Police Station Officer, Bhandara,
Tah. & Distt. Bhandara (M.S.) Respondent.

Mr. P.D. Ganvir, Advocate for applicant.
Mr. S.R. Gajbhiye, Advocate for victim.
Mr. N.S. Rao, APP for State.

CORAM : ROHIT B. DEO, J.
DATE : August, 26, 2021.

Oral Judgment

The applicant, who shall hereinafter referred to as 'the accused', allegedly outraged the modesty of Mrs. 'A', by stalking her, trying to barge in her house by forcing open the main gate and professing love and asking her for sexual favour. Mrs. 'A' lodged report dated 12-10-2015 on the basis of which Crime 304 of 2015 came to be registered at Bhandara Police Station for offences punishable under Sections 354-A(1)(ii), 354-D(1) (i) and 506 of the Indian Penal Code (for short, 'I.P.C.').

2. Investigation proceeded on the usual lines, the chargesheet was submitted upon completion of the investigation, the learned Magistrate explained the particulars, the accused pleaded not guilty and claimed a trial.

3. The prosecution examined as many as five witnesses to bring home the charge and the prime witness is PW 1- Mrs. 'A'.

4. The learned Magistrate, upon appreciation of evidence on record, recorded a finding of guilt and sentenced the accused to suffer rigorous imprisonment for two years and to payment of fine of ₹ 15,000/- for offence punishable under Section 354-A (1)(ii) of the IPC and to suffer rigorous Imprisonment for two years and to payment of fine of ₹ 15,000/- for offence punishable under Section 354-D(1)(i) of the IPC.

5. The accused challenged the judgment of conviction in Criminal Appeal 03 of 2017, which is rejected by the learned Sessions Judge, Bhandara vide judgment dated 21-10-2020.

6. It is well settled that the scope of revisional jurisdiction is extremely limited. It would be impermissible for the revisional Court to reappreciate the evidence on record as if sitting in appeal. Interference may be warranted only if the findings border on perversity, or there is otherwise a gross miscarriage of justice which has occasioned or there is any glaring error of procedure or law causing prejudice, and the aforesaid circumstances are only illustrative.

7. Scrutinizing the concurrent view on the anvil of the parameters for exercising revisional jurisdiction, the evidence on record, particularly that of Mrs. 'A' is confidence inspiring, and even otherwise, findings of fact

which are recorded concurrently by the Courts below, are not shown to be perverse. Considering that the findings which are recorded concurrently are not only plausible but are the only findings which could have been recorded on the basis of the evidence on record, there is absolutely no scope to interfere with the conviction recorded.

8. The informant Mrs. 'A' has placed on record an affidavit stating that with the passage of time the accused has proved to be 'a true gentleman' and 'a good member of the society'. She, has therefore, prayed that the accused be released on probation.

9. Mrs. 'A', who filed the affidavit was present personally along with her husband and she reiterated the contents of the affidavit.

10. I am afraid, there is no scope to grant the benefit of probation. The applicant is convicted for a sexual offence. It is well settled that granting probation to a convict of sexual offence would not be a proper exercise of discretion.

11. The offence is non-compoundable, and considering the stage at which the affidavit is placed on record, the only purpose which the affidavit can serve is to be a mitigating circumstance in imposing the sentence.

12. The accused is the owner of a Gymnasium, is the statement of the learned Counsel. It is further stated that the accused has paid the fine

imposed by the learned Magistrate. In my considered view, the sentence imposed can be modified, considering the affidavit as a mitigating circumstance.

13. While the conviction of the accused for offences punishable under Sections 354-A(1)(ii) and Section 354-D(1)(i) of the IPC is maintained, the sentence is modified as follows.

14. The accused is sentenced to imprisonment for the period already undergone and to payment of fine of ₹ 50,000/- each for offences punishable under Sections 354-A(1)(ii) and Section 354-D(1)(i) of the IPC in addition to the fine of ₹ 15,000/- for each offence, imposed by the learned Magistrate.

15. The total fine of ₹ 1 lakh, which is in addition to the total fine of ₹ 30,000/- imposed by the Magistrate, shall be deposited in the jurisdictional Court within the next Seven days. In default of payment of fine the accused is sentenced to suffer simple imprisonment for a period of one year for offence punishable under Section 354-A(1)(ii) of the IPC and for a period of one year for offence punishable under Section 354-D(1)(i) of the IPC.

16. The revision is partly allowed in the aforestated terms.

17. List this disposed of appeal on 06-09-2021 under the caption 'for reporting compliance'.

JUDGE

Deshmukh