

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

CRIMINAL REVISION APPLICATION NO. 68 OF 2021

Gunwant Ghanshyam Hajare,
Age 33 years, Occupation – Driver,
R/o Palasgaon, Tahsil – Armori,
District – Gadchiroli.

.... **APPLICANT**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Gadchiroli, District -
Gadchiroli.

.... **NON-APPLICANT**

Mr. R.R. Vyas, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.PP. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.
DATED : 28th OCTOBER, 2021

ORAL JUDGMENT :

The applicant is assailing the judgment dated 29-6-2016 rendered by the learned Chief Judicial Magistrate, Gadchiroli in Summary Criminal Case 1002/2015 whereby the applicant is convicted for offences punishable under Section 279 of the Indian Penal Code and Sections 184 and 187 read with Section 134 of the Motor Vehicles Act and is sentenced to suffer simple imprisonment for three months

for each of the offence proved.

2. The applicant challenged the judgment of conviction in Criminal Appeal 30/2016 which is dismissed by the learned Sessions Judge, Gadchiroli vide judgment dated 30-8-2021.

3. Considering the limited scope of revisional jurisdiction, the learned Counsel Mr. R.R. Vyas for the applicant has canvassed two submissions. The first submission is that certain leading questions were put to PW 4 and PW 6 pertaining to the identification of the applicant as the driver of the offending vehicle, and the conviction is, therefore, vitiated. Mr. R.R. Vyas would invite my attention to certain decisions to buttress the submission that the learned Magistrate, who was duty bound to ensure a fair trial, was not alive to the statutory duty. The other submission is that the applicant is poor a person who earns his livelihood by driving commercial vehicle, and considering that he has already suffered incarceration for twenty days, the sentence of imprisonment for three months deserves to be modified.

4. I do not find it necessary to make any positive observation on the first submission and the reason is that even if the portion to which Mr. R.R. Vyas refers is entirely excluded from consideration, the evidence

on record is sufficient to establish that the applicant was the driver of the offending vehicle. I note that there is absolutely no cross-examination on any material aspect, of any of the witnesses.

5. In exercise of revisional jurisdiction, this Court would be loath to interfere with a finding of fact concurrently recorded since it is not demonstrated that the finding is perverse or that there is a serious miscarriage of justice. In so far as the second submission is concerned, it is true that two persons suffered injuries. The prosecution case, which is proved, is that while driving on the highway, the truck driven by the applicant dashed against a parked commercial vehicle. The incident occurred in the night intervening 06-7-2015 to 07-7-2015. The applicant has no criminal antecedents. The applicant has already suffered incarceration for twenty days. It would not be appropriate to compel the applicant, who has a family to support, to suffer further incarceration. At the same time, while reducing the sentence of imprisonment to already undergone, I am inclined to impose the applicant to payment of fine of Rs.20,000/- (Rupees Twenty Thousand) and in default, to suffer simple imprisonment for two months. The fine if deposited, be paid to the victims of the accident as compensation.

6. The criminal revision application is partly allowed.

7. The conviction of the applicant under Section 279 of the Indian Penal Code and Sections 184 and 187 read with Section 134 of the Motor Vehicles Act is maintained. The sentence of imprisonment for three months is modified to imprisonment already undergone. Additionally, the applicant shall deposit fine of Rs.20,000/- (Rupees Twenty Thousand) in the trial Court within the next thirty days or in default, to suffer further simple imprisonment for two months. Fine if deposited, shall be paid to the victims as compensation.

JUDGE

adgokar