

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

CRIMINAL REVISION APPLICATION NO.95 OF 2021

Vishal s/o Sadashiv Bangale,
A/a 36 years, Occ: Labourer,
R/o Ashlesha Apartments, Adarsh Colony,
Gorakshan Road, Akola,
Tq. and Distt. Akola. **APPLICANT**

...VERSUS...

State of Maharashtra, through the
Police Station Officer,
Police Station Civil Lines, Akola.
Tq. and Distt. Akola. **RESPONDENT**

Mr. C. A. Joshi, Advocate for Applicant.
Mr. N. R. Rode, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **17th NOVEMBER, 2021.**

ORAL JUDGMENT:

Heard Mr. C. A. Joshi, the learned Counsel for the applicant and Mr. N. R. Rode, the learned Additional Public Prosecutor for the respondent/State.

2. The applicant faced trial, along with co-accused Manish Waghmare for offence punishable under Sections 323 and 447 of the Indian Penal Code (IPC). The two juveniles in conflict

who allegedly participated in the crime were proceeded under the Juvenile Justice (Care and Protection of Children) Act, 2015.

3. The learned Magistrate, vide judgment dated 11.03.2014, was pleased to convict the accused under Sections 323 and 447 of the Indian Penal Code and sentence them to suffer simple imprisonment for one month and to payment of fine of Rs.500/- (Rupees Five Hundred) for offence punishable under Section 323 of IPC and to suffer simple imprisonment for one month for offence punishable under Section 447 of IPC.

4. The accused preferred Criminal Appeal 32/2014, which came to be partly allowed by the Additional Sessions Judge, Akola vide judgment dated 14.10.2021. While the Appellate Court set aside the conviction under Section 323 of IPC, the conviction under Section 447 of IPC is upheld and so is the sentence imposed.

5. Considering the limitation of revisional jurisdiction, the learned counsel for the applicant Mr. Joshi fairly has not invited this Court to re-appreciate the evidence on record. The short submission is that having set aside the conviction under

Section 323 of IPC, the Appellate Court completely misdirected itself in convicting the applicant under Section 447 of IPC on the premise that the presence of the applicant in the house of the informant, with the requisite intent, stood proved by certain suggestions given to the informant which partake the nature of admissions.

6. I have scrutinized the record and having done so, I am inclined to agree with the submission canvassed by Mr. Joshi.

7. The *sine qua non* ingredient to bring home charge under Section 441 is that entry into a property in possession of another must be with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. While disagreeing with the findings recorded by the learned Magistrate, the Appellate Court has held that the offence punishable under Section 323 of IPC is not proved. The judgment of the Appellate Court does not show that there is any independent consideration of the essential ingredients of offence punishable under Section 447 of IPC. The learned Appellate Court has held that entry into the property with the requisite intent is proved in view of the suggestions given to the informant.

8. Perusal of the record reveals that the suggestions which are referred to by the Appellate Court are not given by the learned counsel who conducted the cross-examination on behalf of the applicant, and therefore, no inference adverse to the applicant could have been drawn on that basis.

9. In view of a clear error committed by the Appellate Court, which has occasioned serious miscarriage of justice, the conviction and sentence under Section 447 of IPC is liable to be quashed and set aside.

10. In so far as the co-accused is concerned, in a revision preferred by the co-accused, the offence under Section 447 is compounded.

11. The revision is allowed in the aforestated terms.

JUDGE

NSN