

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

Criminal Revision Application (Revn) No. 101 of 2021

Kuldip S/o Prabhakar Kalpande
Aged about 39 years,
Occupation : Agriculturist,
R/o. Kasampur, Tah. Achalpur,
District Amravati.

.... Applicant

.. Versus ..

State of Maharashtra
Through Police Station Officer,
P. S. Pathrot, Tah. Achalpur,
District – Amravati.

.... Non-Applicant/
Respondent

Mr. T. U. Tathod, Advocate for the applicant
Mr. N. S. Rao, A.P.P. for the State

CORAM : ROHIT B. DEO, J.
DATED : 13-12-2021

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

2. Heard finally with consent of learned counsel appearing for the parties.

3. The applicant is assailing the judgment dated 12-10-2011 rendered by learned Judicial Magistrate First Class, Court 3, Achalpur in

Regular Criminal Case 66/2010 whereby the applicant is convicted for offence punishable under Section 353 of the Indian Penal Code (IPC) and is sentenced to suffer simple imprisonment for three months and to payment of fine of Rs. 2,000/- (Rupees Two Thousand) and is further convicted for offence punishable under Section 506 of the IPC and is sentenced to suffer simple imprisonment for three months and is convicted for offence punishable under Section 186 of the IPC and is sentenced to suffer simple imprisonment for one month and is also convicted for punishable under Section 323 of the IPC and is sentenced to suffer simple imprisonment for one month. The applicant is further assailing the judgment dated 26-8-2021 rendered by learned Additional Sessions Judge, Court 2, Achalpur in Criminal Appeal 55/2011 whereby the appeal preferred by the applicant is dismissed.

4. The learned counsel for the applicant has made available for my perusal the entire record including the paper book which is prepared at the stage of hearing in appeal.

5. Considering the restricted scope of exercise of jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the learned counsel for the applicant has fairly not invited

me to re-appreciate the entire evidence on record as if acting as an appellate Court. The submission is short. According to the learned counsel for the applicant, in the absence of any material to show that the act was done to deter the public servant from discharging duty, offence punishable under Section 353 of IPC is not made out.

6. I have given due consideration to the evidence of the complainant who is examined as P.W. 2 and whose evidence the learned counsel for the applicant relied. The substance of the testimony is that while there was an enquiry ongoing against the complainant, the applicant-accused, who was present as the person who lodged the complaint leading to the enquiry, slapped the informant four or five times questioning him why the notices of the Gram Sabha were not issued to the applicant/accused.

7. Both the Courts below have found the evidence of the complainant reliable. Concurrent finding is recorded that as a fact, the applicant did slap the informant Gramsevak as the prosecution alleged.

8. The submission that the assault was not with the intention of deterring the Gramsevak from discharging duty overlooks the plain language of Section 353 of IPC which reads thus :

353. Assault or criminal force to deter public servant from discharge of his duty — Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9. It is clear from a cursory reading of the provision that even if, the assault or use of criminal force is in consequence of anything done by the public servant in the lawful discharge of his duty, the penal provision is attracted. Anything done includes anything not done or omission. The fact that the public servant was assaulted since according to the applicant/accused he did not issue him notices of the Gram Sabha which he was required to do, clearly brings into play the penal provision since the assault is in consequence of something done or omitted to be done by the public servant in discharge of duty.

10. In this view of the matter, there is absolutely no case made out for invoking revisional jurisdiction. The revision is dismissed.

JUDGE

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