

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 05 OF 2022

Mahesh @ Ghansham Prakash Pawar (C-12391) ... Appellant
Versus
The State of Maharashtra ... Respondent

....
Mr. Pramod D. Patil, Advocate for appellant – (Appointed)
Smt. Geeta L. Deshpande, APP for respondent
....

CORAM : R. G. AVACHAT, J.

**RESERVED ON : 28th JANUARY, 2022
PRONOUNCED ON : 16th FEBRUARY, 2022**

ORDER :-

. This is a jail appeal. The appellant has sent application from jail. The same is converted into an appeal. Shri Pramod D. Patil, the learned Advocate was appointed to represent the appellant herein.

2. The challenge herein is to the judgment of conviction and the order of sentence passed by the learned Additional Sessions Judge, Dhule in Sessions Case No. 41/2019, whereunder the appellant has been convicted for the offences punishable under Sections 353, 186, and 506 of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment.

3. The details of conviction and resultant sentences are as under:

Sr. No.	Offence	Sentence
01.	U/Sec. 353 of I.P.C.	To suffer rigorous imprisonment for three years.
02.	U/Sec. 186 of I.P.C.	To suffer rigorous imprisonment for one month.
03.	U/Sec. 506 of I.P.C.	To suffer rigorous imprisonment for four years.

All the sentences to run concurrently.

4. The facts are as under:

The appellant and one Rahul Thorat were facing trial in Sessions Case No. 59 of 2017. Both were under trial prisoners. They were brought to the Court on 17.02.2018 under proper escort. Police Sub Inspector Shri Hanuman Ugale, was a witness in the said Sessions Case. His evidence was to be recorded on 17.02.2018. He had, therefore, been to the Court. It is the case of the prosecution that while Shri Hanuman Ugale was proceeding towards the Court of 4th Additional Sessions Judge, Dhule, both, the appellant herein and co-accused Rahul Thorat rushed towards the informant. They looked at him angrily and even abused and tried to pressurise him. The appellant herein gave threat to his life.

5. On the directions of the Court, the informant lodged the report against the appellant and the co-accused. It was registered vide C.R. No.27/2018 with Dhule City Police Station for the offence punishable under Sections 353, 341, 186, 504, 506 read with Section 34 of the IPC.

6. On completion of the investigation, the appellant and the co-accused were proceeded against. The charge was framed against both of them. They pleaded not guilty.

7. To establish the charge, six witnesses were examined. Some documents were also produced in evidence. The learned Additional Sessions Judge, on appreciating the evidence in the case, convicted and sentenced the appellant herein as stated above. The co-accused was however acquitted.

8. The learned Advocate for the appellant would submit that no independent witness was examined in the case. A small incident might have been blown out of proportion. He, therefore, urged for taking a lenient view.

9. The learned APP would, on the other hand, submit that the appellant had a criminal antecedent. He misbehaved with and even gave threat to the life of the Investigating Officer. The learned APP urged for dismissal of the appeal.

10. Based on somewhat similar evidence, co-accused was acquitted. The evidence in the case was that of the Investigating Officer, three Police personnel and one Court Peon. The learned Advocate for the appellant may therefore have reason to submit that no independent witness, such as one who had come to the Court to attend to his case, has been examined. True, the witnesses gave evidence consistent with the prosecution case. The trial Court therefore rightly convicted the appellant.

11. There is another aspect of the matter. The offence was committed on 17.02.2018. The punishment provided for the offence punishable under Section 353 IPC on the date of the offence in question was imprisonment of either description for a term which may extend to two years or with fine or with both. The State of Maharashtra amended Section 353 IPC with effect from 21.04.2018.

As such, on the given day, the offence was punishable with imprisonment for a term which may extend to two years. The learned Sessions Judge, however, sentenced the appellant herein with imprisonment for three years for the offence punishable under Section 353 IPC. The same is impermissible in law.

There is one more aspect of the matter. In view of this Court, the learned Magistrate ought not to have committed the case to the Court of Session for trial, since on the date of commission of offence, it was punishable with imprisonment, which may extend to two years and was triable by Magistrate. It is only on 21.04.2018 the said amendment (Maharashtra) to Section 353 IPC enhancing the punishment provided there for and making it exclusively the trial by the Court of Session came into being. Section 353 IPC appearing in Schedule-I of the Code of Criminal Procedure was thus amended. Meaning thereby by virtue of State of Maharashtra amendment with effect from 21.04.2018, the offence punishable under Section 353 IPC came to be provided with a maximum sentence of imprisonment for five years and making it triable by the Court of Session. As such, the offence under Section 353 IPC for which imprisonment for five years was provided is made triable by the Court of Session. Original

Section 353 IPC stands on the statute book as it is. It is a Central legislation. The Central legislation stands as it is making the offence under Section 353 committed before the State amendment to be triable by Judicial Magistrate First Class.

12. In view of this Court, the quantum of sentence imposed, is disproportionate. The offence was committed since the appellant was under impression that he was falsely implicated by the informant – Police Officer. It was his emotional outburst. True, his behavior constitute the offences for which he has been convicted. Had the trial Court considered the appellant's plight, it would not have dealt him with such a severe punishment. In view of this Court, sentence of imprisonment for a period of six months for each of the offence proved against the appellant would meet the ends of justice. The said sentence shall run concurrently. The appeal is therefore allowed in terms of the following order:

ORDER

- (i) The order dated 09.11.2021, passed by the learned Additional Sessions Judge, Dhule, in Sessions Case No.41 of 2019, convicting the appellant for the offence

punishable under Sections 353, 186 and 506 of the Indian Penal Code, is maintained. The sentence of imprisonment imposed on him for the offences under Sections 353 and 506 of the Indian Penal Code is reduced to a period of six months.

(ii) Rest of the terms of the impugned order to stand unaltered.

13. The fees of Shri Pramod D. Patil, learned Advocate appointed for the appellant is quantified at Rs.7,000/-.

[R. G. AVACHAT, J.]

SMS