

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

CRIMINAL REVISION NO. 75/2020

Shantaram Raghunath Fulzele ..Versus...State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.B.Tiwari, Advocate for applicant
Mr. I.Damle, APP for Respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/01/2022

Heard Mr. Tiwari, learned counsel for the applicant.

The appeal challenges the conviction of the appellant under Section 353 of the IPC by the Assistant Sessions Judge Gadchiroli, by the judgment dated 21.1.2019, whereby instead of sentencing him, directed the appellant to be released on execution of bond of Rs. 15000/- with one surety, to the effect that he shall keep the peace and be a good behaviour for the period two years. The said judgment has been confirmed by the Appellate Court by its judgment dated 3.2.2020, dismissing the appeal.

Though the period of two years is over, however, learned counsel for the applicant has argued the revision, contending that the conviction itself could not be sustained on two grounds : (1) that the complainant was

not authorized by the higher officers to serve the notice upon the applicant, since it was the case of the complainant that such directions were oral and it is contended that unless there was an authorization in writing, it could not be said that the complainant was acting in the discharge of his duties. The second contention is that the action attributed to the applicant is exaggerated in as much as there was no assault upon the complainant.

Learned APP supports the judgments rendered by the courts below.

In so far as the first ground is concerned, I do not see any merit in the same for the reason that admittedly the directions to serve the appellant with the notice were given to the complainant, who was an Assistant Conservator of Forest by the Chief Conservator of Forest, who was his superior. Though it is true that no duty chart has been placed on record, however, the service of a summons by the complainant at the directions of his superior cannot be said to be an action beyond the official duty of the complainant, so as to make the action illegal and take it out of the purview of the language as used in Section 353 of the IPC. Holding otherwise would render it well nigh impossible for any department to function, as each and every action would require a written order, which is not possible in the functioning of the Forest

Department or for that matter any Department. Reliance placed by Mr. Tiwari, on **Narsayya Lachmayya vrs. State 1953 CrLJ 1569**, which relies upon **In-Provincial Govt. C.P & Berar vrs. Nonelal, AIR 1946 Nag 261**, & holds that the words “in the discharge of his duties as such public servant” mean in the discharge of the duty imposed by law on such public servant in the particular case and does not cover an act done by him in good faith under the colour of his office, is of no assistance for the reason that the complainant and PW-2 and PW-3 were not acting in their personal capacity, but were acting under the instructions of their superior in the matter of service of the notice upon the applicant. **Gorakhnath vrs. State of Maharashtra, Manu/MH/0269/1980, Chhalasingh vrs. State of Maharashtra, 2012 Bom CR (Cri) 734 and Aniruddha vrs. State of Maharashtra, 2008 (2) ALD (Cri) 463** are all matters relating to arrest of the persons concerned therein without a warrant or any authority in law, in view of which they are clearly not attracted.

In so far as the second contention is concerned, PW-2 Rakesh Magrurwar, PW-3 Manohar Godshelwar, PW-4 Mohan Naikwade are all consistent in their testimony to say that the appellant had used criminal force to deter the PW-4 from serving the notice upon him. **Balraj Lalu Birkure vrs. State of Maharashtra, 2015 ALL MR (Cri) 3479**, relied upon by Mr. Tiwari, learned counsel for the applicant, is on a totally different footing

whatsoever as is reflected from para 5 thereof, which records the absence of the ingredients for Section 353 of the IPC in the FIR itself. That apart, the learned Sessions Court in the appeal has also viewed the DVD placed on record at Exh. 20 with the certificate under Section 65-B of the Evidence Act, to hold that the appellant had indeed committed the offence under Section 353 of the IPC. That being the position, in my considered opinion, I do not see any reason to interfere in the well reasoned judgments of the Courts below. The learned Trial Court has already given benefit of the Probation of Offenders Act to the applicant, which period is also over and therefore the impugned judgments need no interference. The revision is accordingly dismissed.

JUDGE

rvjalit