

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

CRIMINAL REVISION APPLICATION NO. 84/2022

Dnyaneshwar Anandrao Balpande..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. A.A.Dhawas, Advocate for applicant
Ms. T.H.Udheshi, APP respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/05/2022

1] In pursuance to the order dt. 7/4/22 passed earlier, Heard Mr. Dhawas, learned counsel for the applicant, as Mr. Bezalwar is no longer the counsel appearing for the applicant.

2] Mr. Dhawas, learned counsel for the applicant, on the question of grant of benefit of the Probation of Offenders Act, submits that Section 360(1) of the Cr.PC. is a mandatory provision, in which the learned Magistrate or the appellate Court has to record in the judgment the special reasons for not providing the benefit of Section 360 of Cr.PC to the accused. He submits that there are no such reasons. Further inviting my attention to Section 4 of the Probation of Offenders Act, he submits that considering the fact that there are no criminal antecedents, the applicant is a poor agriculturist, the report of the Probation Officer be called and based upon it, the benefit of the Probation of Offenders Act be given.

3] This contention is vehemently opposed by the learned APP, who places reliance upon Section 19 of the Probation of Offenders Act which excludes the applicability of Section 360 of the Cr.PC, 1973, which is *pari materia* to Section 562 of Cr.PC., 1908. A further reliance is placed upon **Ajahar Ali vrs. State of West Bengal, (2013) 10 SCC 31**, to contend that in case of heinous crime such as offence under Sections 354, 354-A, 354-B, 354-C and 354-D of the IPC, the benefits of Probation of Offenders Act are not available.

4] A reading of Section 19 of the Probation of Offenders Act would indicate exclusion of provision of Section 360 of the Cr.PC for the purpose of Section 4 of the Probation of Offenders Act. It is further material to note that the applicant has been convicted for the offence under Section 354-B of the IPC. In **Ajahar Ali** (supra), the Hon'ble Apex Court has held that the provisions of Section 354 of the IPC have been enacted to safeguard the public morality and decent behaviour and therefore, if any person uses criminal force upon any women with the intention or knowledge that the women's modesty will be outraged, he would be punished, thereby indicating that the benefit of the Probation of Offenders Act ought not be given to the persons who have been convicted under Section 354 of the IPC. In the order dated 7.4.2022, I have pointed out as to what was the role of

the applicant, in regards the commission of the offence under Section 354-B of the IPC, when he had tried to not only disrobe the complainant, but had also tried to commit the offence under Section 376 of the IPC upon her, in view of which in my considered opinion even on facts the applicant would not be entitled to any benefit of the Probation of Offenders Act even if it was held to be so applicable. I therefore do not see any merit in the contention, the same is rejected.

5] The criminal revision is accordingly dismissed.

JUDGE

Rvjalit