

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

CRIMINAL REVISION APPLICATION NO. 115/2021
(Shri Subhash Namdeorao Daygavane Vs. State of Maharashtra & anr.)

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

Court's or Judge's Order

Mr. D. R. Bhoyar, Advocate for applicant.
Ms. M. Deshmukh, APP for respondent No.1.
Mr. D. B. Chhagankar, Advocate for respondent No. 2.

CORAM :- AVINASH G. GHAROTE, J.

DATED :- 25.03.2022

Heard Mr. D. R. Bhoyar, learned counsel for the applicant, Ms. M. Deshmukh, learned Additional Public prosecutor for respondent No. 1 and Mr. D. B. Chhagankar, learned counsel for respondent No. 2. The applicant has been arraigned for offence punishable under Sections 294 and 506 of the Indian Penal Code (IPC) and has been acquitted by the learned Trial Court by the judgment dated 30.07.2013. This acquittal has been set aside by the learned Appellate Court by judgment dated 06.12.2021, whereunder the applicant has been convicted for offence punishable under Section 294 of the IPC and sentenced to suffer rigorous imprisonment for 3 months and fine of Rs. 5000/- in default, rigorous

imprisonment for 15 days and also convicted for the offence punishable under Section 506 of the IPC and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs. 25,000/- in default, simple imprisonment for 3 months. The fine has been paid.

2. The applicant consequent to the judgment of the Appellate Court, dated 06.12.2021, was arrested on the same day and was released on bail by this Court on 15.12.2021. Thus, the applicant has suffered incarceration for a period of 13 days.

3. Learned counsel for the applicant submits that in so far as conviction under Section 506 of IPC is concerned, there is absolutely no material on record for the learned Appellate Court to have convicted the appellant for the said offence. He invites my attention to the evidence of the complainant-PW1 at Exh. 14 (Page 42) for this purpose and so also the evidence of PW 2 - Sharad Damodhar Mahakalkar (Page 44), PW-3 - Vilas Vithobaji Dandekar (page 45) and PW-4 Manohar Wasudeo Chafekar (page 47) and submits that the

conviction of the applicant under Section 506 of the IPC, therefore, cannot be sustained.

4. In so far as the conviction for the offence under Section 294 of IPC is concerned, learned counsel for the applicant submits that there is variance between the statement of the PW-1 on one hand and PW-2 to 4 on the other as the PW-1 does not state that the PW 2 to 4 were present on the spot at that point of time.

5. Learned Additional Public Prosecutor, in so far as the conviction under Section 506 of the IPC is concerned, fairly concedes that there is no material on record to sustain the same. However, in so far as conviction under Section 294 of IPC is concerned, she supports the same and submits that the complainant's statement supports that PW-1 to 4 are consistent and support the conviction.

6. A perusal of the complaint dated 11.6.2019, (page 15 of the paper book of the learned Sessions Court) would indicate, that there is no allegation regarding any threat to the complainant, her person, reputation or

property or any other action as is contemplated by Section 503 of IPC. Even the evidence of PW-1 to 4, does not indicate this position. Learned Sessions Court has merely relied upon the utterances of the applicant. As narrated in the complaint and chief of PW-1 for this purpose, which, in my opinion does not indicate the satisfaction of the requirement under Section 503 of IPC, considering which, the conviction rendered by the Appellate Court for the offence under Section 506 of IPC cannot be sustained and is hereby quashed and set aside.

7. Since the learned counsel for respondent No. 2 assisting the prosecution makes a statement that Rs. 20,000/- out of the fine amount, which was directed to be paid to the victim/complainant, has not been withdrawn by her, the same shall stand refunded back to the applicant.

8. That takes me to the next contention regarding the conviction by the Appellate Court under Section 294 of IPC. A perusal of the complaint as well as the evidence of PW-1 to 4, show that they are all

consistent, inasmuch as, all of them speak about the obscene words uttered by the applicant to the complainant. Nothing contrary has been brought out in the cross-examination of these witnesses. The acquittal by the learned Magistrate of the applicant of the offence under Section 294, IPC was merely based upon the ground that the complainant in her complaint dated 11.06.2009, had not stated that PW-2 to 4, were present on the spot. The absence of such statement in the complaint has been admitted by her in para 6 of the cross-examination. However, the evidence of PW-2 to 4 who are admittedly resident of the same locality and have to use the road in front of the house of the complainant for approach and egress from their respective residence, have consistently stated that at the time of the incident, they were passing through in front of the house of the complainant and have heard and seen that the applicant/accused having uttered those obscene words to the complainant. For a moment presuming that even if the evidence of PW-2 to 4 is not taken into consideration still, the complainant- PW-1 herself has entered into the witness box and deposed in

consonance with the obscene utterance made by the applicant and nothing has been brought in her cross examination to discredit her testimony, considering which, in my considered opinion, the conviction of the applicant under Section 294 of IPC, as rendered by the learned Appellate Court, is liable to be maintained, however, the sentence is reduced from 3 months to 2 months with simple imprisonment and a fine of Rs. 5000/-, in default 15 days simple imprisonment. Since the applicant has been incarcerated for the period from 06.12.2021 to 19.12.2021, he shall be entitled to a set off in respect of the same under the relevant provision of the Criminal Procedure Code. The applicant shall surrender to the prison authority to undergo the remaining sentence. The revision stands partly allowed in the above terms.

9. The Registry of this Court shall intimate this order to the learned Sessions Court, who shall take appropriate steps to ensure that the applicant completes the balance of his sentence.

Digitally
signed by
JITENDRA
BHARAT
GOHANE
Date:
2022.03.29
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(AVINASH G. GHAROTE, J)