

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

CRIMINAL REVISION APPLICATION NO.371 OF 2005

Chandrakant s/o Bhaskar Tayade,
Age 38 years, Occu : Advocate,
R/o. Yeshwant Colony, Near Nahata
College, Jamner Road, Bhusawal,
Tq. Bhusawal, District Jalgaon.

...Applicant

VERSUS

1. The State of Maharashtra
(copy to be served through
A.P.P. High Court of Judicature
of Bombay Bench at Aurangabad).

2. Jagannath s/o Namdeo Nikam
Age 43 years, Occu : Service,
R/o II Type, Quarters No.24/E,
Varangaon Ordance Factory,
Varangaon, Tq. Bhusawal,
District Jalgaon.

...Respondents

...

Mr. N.S. Shah h/f Mr. S.S. Patil, Advocate for the applicant.

Mr. S.B. Narwade, APP for the respondent-State.

Ms. Akshara Madake h/f Mr. S.S. Thombre, Advocate for respondent
no.2.

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CORAM : S.G. MEHARE, J.

DATED : APRIL 17, 2023

ORAL JUDGMENT :-

1. Heard the respective counsels.

2. The applicant/complainants being dissatisfied with the
order of acquittal passed by the learned Judicial Magistrate First
Class, Bhusawal in RCC No.47 of 1995 dated 08.08.2005 has
preferred this revision.

3. Learned counsel for the applicant would submit that the learned Magistrate erred in not believing the injured whose testimony was supported with the medical evidence. He has also argued that the learned Magistrate has erroneously observed that it was impossible for the injured to go to his home first and then to the hospital. That the learned Magistrate erroneously believed the defence of the accused. There were many witnesses who have corroborated the allegations levelled against the accused. An independent eye witness PW-6 Prahlad More was also disbelieved for extraneous reasons that he had the another way to go to his village Kotha, but he deliberately choose the road passing through the spot of incident. The prosecution had proved the case beyond the reasonable doubt but for want of proper appreciation of the evidence, the accused has been acquitted.

4. Per contra, learned counsel for the accused/respondent would argue that no incident as such happened. However, one of the colleague of the accused had lodged the report against the complainant under Section 353 of Indian Penal Code and the accused was the witness to that incident. The complainant is an advocate; therefore, he was trying to have no evidence in the case lodged against him under Section 353 of Indian Penal Code. Therefore, he implicated the accused falsely in the crime. It was not possible for the accused to reach immediately before the injured reached, in front of

the bungalow where the alleged incident happened. One witness who was the clerk of the injured was allegedly with him had filed an affidavit that he has been falsely cited as an eye witness. Reading the evidence as a whole, the learned Magistrate has properly and correctly appreciated the evidence and disbelieved the injured. There are no errors on the face of record. Therefore, the revision deserves to be dismissed.

5. The Court has very little scope to interfere with the judgment of acquittal under Section 397 r/w 401 of Cr.P.C. Unless there are apparent mistake on the face of record, the revisional Court should be slow in interfering with the judgment of acquittal.

6. The Court has gone through the impugned judgment. The most reliable and believable witness, who was the clerk of the injured had sworn in an affidavit before the Court that he has been falsely cited as an eye witness. Withholding such a material witness is sufficient to draw the adverse inference against prosecution. That apart, considering the two spots it seems not possible to the accused to reach on the spot of the incident before the complainant reached there. It appears that the learned Magistrate has correctly raised the suspicion over PW-6, who was allegedly the eye witness to the incident. Reading the evidence as a whole, it appears that the learned Magistrate has given the correct and proper reasons to disbelieve PW-6 and the injured. Merely injury to the complainant though

corroborated with medical evidence is not sufficient to hold the accused guilty. The prosecution has to prove that the accused was the author of the said injury.

7. After having gone through the impugned judgment and order, the Court believe that the learned Magistrate has correctly appreciated the evidence and there were no errors and illegalities in the impugned judgment and order. In result, the revision application fails. Hence, the following order :

ORDER

- (i) The revision application stands dismissed.
- (ii) Record and proceedings be returned to the learned Judicial Magistrate First Class, Bhusawal.
- (iii) Rule is discharged.

(S.G. MEHARE, J.)