

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.196 OF 2023
WITH APPLN/2441/2023 IN REVN/196/2023

CHANDRAKANT PRALHADRAO BIRADAR
VERSUS
THE STATE OF MAHARASHTRA PUBLIC PROSECUTOR HIGH COURT
OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

...
Advocate for Applicant : Mr. V. D. Gunale
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 03-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant is seeking suspension of sentence imposed upon him to suffer rigorous imprisonment for three years for the offence punishable under Section 354A of the Indian Penal Code and simple imprisonment for three years each for the offences punishable under Sections 452 and 506 of the Indian Penal Code, by the learned Judicial Magistrate First Class, Court No.4, Udgir, by his judgment and order in Regular Criminal Case No.256 of 2018 dated 30.03.2019 and confirmed by the learned Additional Sessions Judge, Udgir, by his judgment and order in Criminal Appeal No.7 of 2019, dated 15.05.2023.

3. Though this Court had circulated a judgment passed in Criminal Revision Application No.318 of 2022 with Application No.3633 of 2022 (*Sambhaji Digambar Kachgund vs The State Of Maharashtra*) dated 03.05.2023, as regards the procedure to be followed after dismissal of the appeal. The learned Additional Sessions Judge, Udgir appears to have not followed it and instead of taking the accused into custody for sending him to undergo the sentence, he left the accused without any orders.

4. Since the applicant was not taken into custody by the appellate court, he approached this Court and was seeking suspension. When the legal position was brought to the notice of the learned counsel for the applicant, he stated that the applicant would surrender before the trial court. However, in the morning, he submitted that the applicant went to the learned Judicial Magistrate First Class, Court No.4, to surrender. However, the Judicial Officer denied to take him into custody saying that unless there are orders, he would not take him into custody. Then, he approached to Mr. P. D. Subhedar, the learned Additional Sessions Judge, Udgir. He told him that he has already sent the record and papers to the learned Judicial Magistrate First Class. Hence, he cannot take him into custody. Such a conduct on the part of the learned Judicial Officers is a matter of serious concern. On his statement, learned Registrar (Judicial) of this Court was called and asked to find out the facts. He made phone call to the learned

Additional Sessions Judge, Udgir. In reply, he informed him that the applicant was taken into custody by the learned Judicial Magistrate First Class and conviction warrant has been issued. In such a way, the applicant has been taken into custody.

5. The learned counsel for the applicant would submit that the conviction was for a short-term of three years. There is wide scope to interpret the ingredients of Section 354A of the Indian Penal Code. The applicant is now running around 51 years and at the time of the incident, he was 42 years old. The applicant has a good case on merit. There were no antecedents to his discredit. He has referred to both the impugned judgments and orders and argued that the evidence has not been properly appreciated and the law involved in the case has not been properly interpreted. Hence, the applicant deserves suspension of sentence.

6. Per contra, the learned A.P.P. would submit that there are two concurrent judgments against the applicant. The prosecution had proved the case beyond the reasonable doubt. There is a little scope for the revisional Court to interfere with the impugned judgments and orders. *Prima facie* there are no errors on the face of the record in the impugned judgments and orders. Hence, the applicant does not deserve suspension of sentence.

7. Perused the impugned judgments and orders and other papers.

8. It is a case of sexual harassment of a woman. Considering the material on record, the applicant appears to have the legal issues to be argued in the revision. The applicant has roots in village Awalkonda, Taluka Udgir, District Latur.

9. Taking into consideration the aforesaid facts in toto, the Court is of the view that this is a fit case to exercise discretion under Section 389 of the Code of Criminal Procedure. Hence, the order:-

- i) Application No.2441 of 2023 is allowed.
- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant, to suffer rigorous imprisonment for three years for the offence punishable under Section 354A of the Indian Penal Code and simple imprisonment for three years each for the offences punishable under Sections 452 and 506 of the Indian Penal Code, by the learned Judicial Magistrate First Class, Court No.4, Udgir, by his judgment and order in Regular Criminal Case No.256 of 2018 dated 30.03.2019 and confirmed by the learned Additional Sessions Judge, Udgir, by his judgment and order in Criminal Appeal No.7 of 2019, dated 15.05.2023 stands suspended till the conclusion of the revision.
- iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount.

- iv) Bail before the learned Additional Sessions Judge, Udgir.
- v) Call R & P.
- vi) List the Revision Application on 20.09.2023.
- vii) Report submitted by the learned Registrar (Judicial) be made part of the record as *annexure 'A'* and the application filed by the learned counsel for the applicant be marked as *annexure 'B'*.

(S. G. MEHARE, J.)

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