

Rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.582 OF 2023
IN
APPEAL NO.159 OF 2023

Firoz Khaja Mohammad Shaikh] .. Applicant

vs.

Sr.PI, Nashik Road Railway Police Station]

& Ors.] .. Respondents

Mr.Mateen Shaikh a/w Ansar Tamboli, Razique Shaikh, Arshad Shaikh, Sharif Shaikh, Muskan Shaikh and Farzana Sawant, for the Appellant.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 16th March, 2023

P.C.

1] The present Interim Application is taken out seeking suspension of sentence imposed by the trial Court in Sessions Case No.340/2019 Admit and the Applicant also seek release on bail.

2] Heard the learned counsel for the Applicant and the learned APP.

The foremost ground which deserve grant of relief prayed in the Application, as argued by the learned counsel for the Appellant is, imposition of sentence of Simple Imprisonment of four years on convicting the appellant for the offence punishable under Section 353 of the IPC alongwith the other Sections.

3] Perusal of the impugned Judgment would reveal that CR no.107/2018 came to be registered in respect of an incident which is alleged to have occurred on 23.03.2018 and on the accusations levelled in the complaint, Section 353, 332 read with 34 of the IPC and Section 151 of the Indian Railway Act came to be invoked.

4] Section 353 of the IPC, which punish an act of assault or administration of criminal force to a public servant or deter that person from discharging his duty, invite imprisonment of either description for a term which may extend to two years, or with fine, or with both.

However, as far as State of Maharashtra is concerned, by Maharashtra Act No.40/2018, there is amendment in the said Section and the punishment of “Two years” is substituted by “five years”.

5] Undisputedly, there cannot be any quarrel about the proposition that ex-post facto laws cannot be permitted to be operated as in terms of Article 20(1) of the Constitution of India, no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as offence, nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of offence.

It is trite law that the sentence imposed on the date of commission of offence has to determine the sentence that can be imposed on conviction, on conclusion of the trial.

6] In the wake of above clear proposition of law, the learned trial Court has clearly erred in imposing sentence of imprisonment for four years on convicting the Appellant under Section 353 of the IPC as the alleged incident occurred on 23.03.2018 and the Maharashtra

Amendment came into effect vide Maharashtra Act No.40/2018 which received the assent of the President on 07.06.2018.

7] In the wake of above, it is a fit case where sentence imposed upon the Appellant deserve to be suspended.

Hence, the substantive sentence passed against the Applicant is suspended. The Applicant Firoz Khaja Mohammad Shaikh shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

Interim Application is disposed off.

[BHARATI DANGRE, J]