

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

**CRIMINAL REVISION APPLICATION NO. 281 OF 2022**

Moreshwar S/o Sambhaji Udise  
Aged about 54 years, Occ: Contractor,  
R/o Bamni, Tq. Ballarpur,  
District Chandrapur

...APPLICANT

---VERSUS---

State of Maharashtra,  
Through Police Station Officer,  
Police Station, Ballarpur, Tq. Ballarpur, District  
Chandrapur.

...NON-APPLICANT

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Shri D.K. Hazare, Advocate for applicant.  
Shri S.A. Ashirgade, APP for non-applicant/State.  
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CORAM : G.A. SANAP, J.  
DATE : JANUARY 07, 2023.

**ORAL JUDGMENT :**

. **Rule.** Rule made returnable forthwith heard with consent of the parties.

2. In this revision, the challenge is to the judgment and order dated 03.12.2022 passed in Criminal Appeal No.81 of 2015 by the learned Sessions Judge, Chandrapur, whereby the learned Sessions Judge dismissed the appeal filed by the applicant against the order of his conviction and sentence. The applicant was

convicted by the learned Judicial Magistrate First Class, Ballarpur for the offences punishable under Sections 186 and 353 of the Indian Penal Code and sentenced to suffer simple imprisonment for three months and one month respectively with fine.

The facts necessary for the decision of the revision application can be summarized as follows:

3. The informant (PW1), at the relevant time, was serving as a Village Development Officer at Bamni Gram Panchayat. The incident, as per the informant, occurred on 03.03.2014 in the Gram Panchayat office, Bamni. The applicant, at the relevant time, was a Member of the said Gram Panchayat. It is stated that on 03.03.2013 there was monthly meeting of the Gram Panchayat. The applicant came to attend the said meeting. He made demand of payment for the drainage construction work done by him from the informant. The informant told him that on next day he would discuss the said matter with the applicant. The applicant got annoyed. The applicant caught hold the hand of the informant and dragged him. The Sarpanch and other staff members intervened in the quarrel and rescued the informant. The applicant while leaving the office of the Gram Panchayat extended threats of dire consequences to the

informant. It is stated that the informant being a public servant was discharging his duties. The applicant assaulted him and obstructed the informant while discharging his official duty. On the next day, the informant lodged the report at Ballarshah Police Station. On the basis of his report, Crime No.39 of 2014 came to be registered against the applicant for the offences punishable under Sections 186, 353 and 506 of the Indian Penal Code (for short, “IPC”).

4. Police Constable-Rajendra Khanke (PW6) conducted the investigation, drew the spot panchanama and recorded the statements of the witnesses and filed the charge-sheet against the applicant.

5. After framing the charge, the learned Magistrate recorded the evidence of six witnesses. The learned Magistrate on appreciation of the evidence found the applicant guilty of the offences punishable under Sections 186 and 353 of the IPC and as such convicted and sentenced him as above. The applicant was acquitted of the offence punishable under Section 506 of the IPC. Against this conviction and sentence, the applicant had filed the statutory appeal before the Sessions Court. The learned Sessions Judge on re-appreciation of the evidence found the evidence reliable

to maintain the order of conviction and sentence. The learned Sessions Judge dismissed the appeal. Against this order of Sessions Judge, the applicant is before this Court in revision.

6. I have heard the learned advocate for the applicant and learned Additional Public Prosecutor for the non-applicant. Perused the record and proceedings.

7. The learned advocate for the applicant submitted that the evidence of the informant (PW1) even if considered as it is would show that it is of no use to the prosecution against the applicant. The learned advocate took me through the First Information Report (FIR) and the examination-in-chief of the informant (PW1) and submitted that the facts stated before the Court by PW1 have been proved to be omission. It is pointed out that the incident narrated in the FIR has not at all been deposed to by the informant (PW1) in his evidence before the Court. The learned advocate submitted that therefore the main foundation of the case of the prosecution has become weak and shaky. He further submitted that PW3 is the husband of the Sarpanch(PW4). PW3 acted as a witness to the spot panchanama. Learned advocate took me through the evidence of PW3 and PW4 and pointed out that in their cross-examinations

they have given vital admissions to conclude that the relations between applicant on one hand and PW3 and PW4 on the other hand are not cordial and therefore PW3 and PW4 have placed on record exaggerated account of the incident, which has not been stated by the informant (PW1). Learned advocate further submitted that in the absence of concrete evidence of the informant, the Courts below have placed explicit reliance on the evidence of PW3 and PW4 to convict and sentence the applicant. The learned advocate submitted that therefore there is an error apparent on the face of the record. The applicant has been convicted and sentenced without any cogent and concrete evidence. The finding of the conviction and sentence has therefore nothing short of perversity.

8. The learned Additional Public Prosecutor submitted that the FIR was exhibited at the time of the evidence of informant (PW1). Learned Additional Public Prosecutor submitted that the Courts below have taken into consideration the facts stated in the FIR as well as in the evidence of the witnesses to convict and sentence the applicant. Learned Additional Public Prosecutor further submitted that the presence of the Sarpanch (PW4) in the meeting on the given date and time is not at all disputed. Learned

Additional Public Prosecutor submitted that PW4 was a natural witness and therefore her evidence was rightly accepted by the Courts below to pass the conviction and sentence.

9. In order to appreciate the submissions, I have gone through the record and proceedings. It is to be noted that while exercising the revisional jurisdiction the exercise of re-appreciation of evidence cannot be undertaken as a matter of right. The exercise of re-appreciation of evidence while exercising the appellate jurisdiction as a matter of right cant be undertaken. While exercising the revisional jurisdiction, un order to re-appreciate the evidence the basic fact required to be proved is that the Courts below has either committed patent illegality while appreciating the evidence or ignored the evidence while arriving at a finding of fact. If the Revisioal Court is satisfied that the error apparent on the record is committed while considering the evidence and which has resulted in arbitrariness, perversity, and unreasonableness, then by re-appreciating the evidence the Court can rectify the error committed by the Courts below.

10. On going through the record and evidence, I am satisfied that the judgment and order passed by the Court below suffer from

error apparent on the face of the record. The evidence of the informant (PW1), who is the star witness of the prosecution, is hardly of any use for the case of prosecution. Whatever he has stated in his examination-in-chief is not part of the FIR. A statement made in his examination-in-chief has been proved to be an omission. It is to be noted that the incident stated in the FIR and the incident stated before the Court by PW1 is self-contradictory. PW1 has not supported the contents of the FIR. In his evidence, he has stated that on account of the construction of drainage, there was dispute between him and the accused. The accused had caught hold his hand and took him to the table of the Sarpanch. This fact has not been stated in his FIR. In his FIR, he had stated that the accused abused and assaulted him. He had further stated in the FIR, the accused caught hold his hand and pushed him and thereby obstructed him from discharging his official duty. It is to be noted that in his cross-examination he has stated that he has settled this dispute with the applicant. He has further stated that in the monthly meeting of the Gram Panchayat on account of the work of Gram Panchayat dispute always occurs between Sarpanch, Gram Panchayat members and Village Development Officer. He has stated in his cross-examination that whatever he has stated in examination-

in-chief with regard to the incident is false. On consideration of the evidence of the informant (PW1), it is seen that his evidence is of no use to take the case of prosecution further. His evidence is not sufficient to prove the basic ingredients of either Section 186 or 353 of the IPC.

**11.** The next important piece of evidence is the evidence of husband of the Sarpanch (PW3) and the Sarpanch (PW4). The investigating officer chose the husband of the Sarpanch as a panch witness to the panchanama. In his cross-examination, PW3 has admitted that when he was Sarpanch, the applicant used to raise disputes with him on account of Gram Panchayat work. When this incident occurred the wife of PW3 was Sarpanch. PW3 is therefore an interested witness. The investigating officer could have selected some independent witness to act as a panch witness to the spot panchanama. In my view, this is a very important aspect with regard to the credibility of the evidence of PW3 and PW4.

**12.** PW4 has narrated the incident in her evidence. According to her, the date of the incident is 03.03.2014. PW1 informant in his substantive evidence has stated that the incident occurred in March 2013. On this aspect, there is variance and inconsistency in the

evidence of the informant and PW4. Even if it is assumed that the prosecution can be given the benefit of the date of the incident, the moot question is with regard to the proof of the incident. In her evidence, PW4 has stated that on the date of the incident, there was a monthly meeting of the Gram Panchayat. The applicant, she herself, and other members with Village Development Officer (PW1) were present. She has stated that in her presence the applicant made demand of the money of drainage construction work. She has stated that when PW1 told the accused to contact him on the next day, the applicant assaulted and extended threats to the informant. In her cross-examination, she has admitted that the applicant instigates the villagers to make complaints against her on account of her non-performance of duties as Sarpanch. She has further admitted that on the next day of the incident she had accompanied the Village Development Officer to the Ballarshah Police Station for lodging the report. She has further admitted that in the Gram Panchayat monthly meeting, the dispute takes place between the members and Sarpanch. In my view, the perusal of her cross-examination and cross-examination of her husband (PW3) would show that the applicant used to make complaints against them. Their cross-examinations would fortify that they have no

cordial relations with the applicant. In my view, in the backdrop of this factual position, it would be difficult to place explicit reliance on their evidence to base the conviction and sentence.

**13.** Perusal of the orders passed by the Courts below would show that all these aspects have not been taken into consideration. The Courts below have read the contents of FIR as it is against the applicant. It is to be noted that this is not according to the law. The FIR is not a substantive piece of evidence, even though it is exhibited. The FIR can be used for the purpose of proof of omissions and contradictions. Except the evidence of PW3 and PW4 there is no other evidence. The PW3 and PW4 are not on good terms with the applicant. In the facts and circumstances, it would be very difficult to place explicit reliance on their evidence. A perusal of their evidence would show that they are interested in the prosecution and conviction of the applicant. All these facts have not been taken into consideration. If all these facts had been taken into consideration then the Courts below would have granted the benefit of the doubt to the applicant.

**14.** In the facts and circumstances, I am of the view that this is a fit case to interfere in the judgment and orders passed by the

Courts below. The revision application therefore succeeds. The revision is allowed.

**15.** The order passed by the learned Sessions Judge, Chandrapur dismissing the appeal is set aside. As a consequence thereof, the order passed by the learned Judicial Magistrate First Class, Ballarpur is quashed and set aside.

**16.** The applicant is acquitted of the offences punishable under Sections 186 and 353 of the IPC.

Rule is made absolute in terms of above.

**JUDGE**

*Wagh*