



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

CRIMINAL REVISION APPLICATION NO. 39 OF 2017

Vishal S/o Dattatraya Bhoge,
Age : 24 Years, Occu. : Driver,
R/o. Kharwandi, Tq. Newasa,
Dist. Ahmednagar.

... Applicant
[Orig. Appellant]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Mahesh S. Taur, Advocate for the Applicant.
Mrs. Ashlesha S. Deshmukh, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.12.2024

Pronounced on : 12.12.2024

ORDER :

1. Revisionist-original accused hereby takes exception to the judgment and order passed by the learned Additional Sessions Judge, Newasa, dated 02.02.2017, in Criminal Appeal No.11/2016, arising out of judgment and order dated 04.04.2016, passed by the learned JMFC, Newasa, convicting revisionist for offence punishable under Section 379 of the Indian Penal Code (hereinafter referred to as "IPC").

2. Brief facts giving rise to RCC No.105/2013 is that, on 31.12.2012, when police party was on patrolling duty in Kharwandi area, they came across a tractor having trolley filled with sand. Therefore, getting suspicious, police party intercepted and when inquiry was made, it was revealed that sand was being transported without permit or license. Therefore, further action was taken on the basis of complaint lodged by Police Head Constable Mr. Giri, resulting into registration of crime No.01/2013, for offence punishable under Section 379 r/w 34 of IPC and Section 15 r/w 3 of the Environment Protection Act.

3. After completion of investigation, case was instituted on the file of learned JMFC, Newasa, who conducted trial vide RCC No.105/2013. The prosecution adduced evidence of in all four witnesses and also relied on documentary evidence. After hearing prosecution as well as defence, learned JMFC, by judgment and order dated 04.04.2016, recorded guilt of the revisionist for offence punishable under Section 379 of IPC.

4. Aggrieved by the above conviction, passed by learned JMFC, Newasa, revisionist preferred appeal before the Additional Sessions Judge, Newasa. The learned District Judge-1 and Additional

Sessions Judge, Newasa heard the appellant therein, i.e. present revisionist, as well as State and finding no merits, dismissed the appeal by judgment and order dated 02.02.2017.

5. Feeling aggrieved by the said dismissal, original accused has preferred instant revision.

6. Learned counsel for the revisionist pointed out that there is false implications. According to him, though prosecution examined four witnesses, one turned hostile, i.e. panch to spot panchanama, and rest of the witnesses were police personnel. That, there was no independent witness. He further pointed out that, revisionist and his mother both were impleaded as accused.

7. He further submitted that, story of the prosecution is not proved beyond reasonable doubt. That, there are major discrepancies in the prosecution evidence. He pointed out that allegations are regarding theft of one brass sand. However, there is no basis or material to demonstrate that the quantity of sand was one brass. In trial court, quantity of sand differs from one brass. Even in charge, quantity of sand is shown as one brass, but in the second charge framed by learned trial Judge, quantity of sand is shown as three

brass. Therefore, according to learned counsel, prosecution was not sure about the quantity of brass.

8. Further objection of the learned counsel is that, here, revenue authority were authorized to take action and lodge FIR in respect of theft of sand, but no revenue official has been examined. Lastly, learned counsel submitted that if the Court is not convinced, then, considering the fact that revisionist has no criminal antecedents, benefit of Probation of Offenders Act be extended instead of sentencing him.

9. Learned APP strongly opposed the present application and submitted that there is rampant and indiscriminate rise in committing theft of sand from river bed without authorization and permit. That, raiding party apprehended revisionist red handed. After thorough investigation, charge is proved and prosecution story has been accepted by the learned trial court as well as learned first appellate court, there being concurrent findings.

10. Heard submissions advanced by both sides. Admittedly, case of prosecution is rested on the evidence of four witnesses. Objection is raised in appeal that there is no independent witness and

that all witnesses are police witnesses except spot panch. It needs to be noted that incident has come into light during dead of the night when police party was on patrolling duty. Therefore, obviously there may not be any independent person or even revenue officers. It seems to be a case of illegal excavation and extraction of sand from river bed. It transpires that out of two accused, the revisionist alone is convicted and his mother, in whose name the tractor was standing, is already acquitted. The crucial evidence is of PW3 Police Head Constable i.e. informant and PW2 driver of the police vehicle. Both the witnesses have consistently stated that, while they were doing patrolling duty in Kharwandi Village vicinity, they came across the tractor with trolley. They both are consistent about present appellant being the driver of the tractor. This aspect was not challenged even before the trial court as well as before the Appellate Court. Therefore, the appellant was found to be driving the tractor in question.

11. These witnesses have stated that after getting suspicious, they intercepted the revisionist and he was questioned whether he had permit or royalty for transportation of sand. However, he was not possessed with any such document. Therefore, further action seems to have been taken. Both these witnesses were subjected to cross-examination, but core of the prosecution case has not been challenged

or even disturbed. They have identified the revisionist. He was apprehended along with *muddemal*.

12. Another point agitated before this Court is that, there is mismatch between the quantity of sand in the prosecution evidence itself. That, there is variance in quantity of sand mentioned in the charge as well as testimony of the witnesses. In the considered opinion of this Court, no much importance could be given to such discrepancies as there is no challenge to the aspect that the revisionist was caught red handed while transporting sand without royalty, permit or license. The panch witness has not supported, but there is evidence of police party. Merely because witnesses are police personnel, there is no reason to disbelieve their evidence. There is no case of false implication. After going through the judgment passed by the trial court, all essential ingredients are found to be ascertained while appreciating the evidence. Even first appellate court has re-appreciated the entire evidence and did not come across any infirmity in the trial court's finding, reasons and conclusion. The revision application being devoid of merits, it is required to dismissed.

13. Learned Counsel for the revisionist, in the alternate, submitted that sentence awarded of four months is harsh. He prays

that benefit of Probation of Offenders Act be extended. Considering the matter to be of the year 2013 and matter having travelled upto this Court in 2017, sentence awarded by the trial court is required to be reduced from four months to two months. Hence, I proceed to pass the following order.

ORDER

- I. The criminal revision application is partly allowed.
- II. Conviction awarded to the revisionist Vishal S/o Dattatraya Bhoge by the learned JMFC, Newasa in RCC No. 105 of 2013 for offence punishable under Section 379 of IPC on 04.04.2016 is hereby maintained, however, the sentence awarded to the revisionist vide clause (1) of the said order is modified and reduced to the effect as under:

“Accused no.1 Vishal Dattatraya Bhoge is convicted for the offence punishable under section 379 of the Indian Penal Code, 1860, vide section 248(2) of the Code of Criminal Procedure 1973. He is sentenced to suffer rigorous imprisonment for two (2) months and to pay fine of Rs.3,000/- (Rupees Three Thousand Only). In default of payment of fine, accused to suffer rigorous imprisonment for 10 days.”

- III. Rest of the impugned judgment and order is maintained.

[ABHAY S. WAGHWASE, J.]