



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 190 OF 2014

Ganpat s/o Hariba Chavan
Age: 58 years, Occu: Driver,
Rural Water Supply Division,
R/o Zilla Parishad Quarters,
Hingoli, Tq. & Dist. Hingoli.

... Petitioner

Versus

The State of Maharashtra
Through Police Station,
Hingoli (City) Dist. Hingoli.

... Respondent

.....

Mr. Rajendrraa S. Deshmukh, Senior Advocate a/w Mr. Vishal Chavan, Advocate i/by Mr. D. R. Deshmukh, Advocate for the Applicant.

Mrs. Chaitali Chaudhari Kutti, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 19.11.2024

Pronounced on : 25.11.2024

JUDGMENT :

1. In the instant revision, there is challenge to the judgment and order dated 13.08.2014 passed by learned Additional Sessions Judge, Hingoli in Criminal Appeal No. 14 of 2009, arising out of the judgment and order dated 30.03.2009 passed by learned JMFC, Hingoli in R.C.C. No. 192 of 2008, recording guilt for offence punishable under Sections 332, 353, 341 and 506 of the Indian Penal Code [IPC].

2. Before learned trial court, present revisionist was chargesheeted for commission of above offences and was duly tried vide R.C.C. No. 192 of 2008 and ultimately held guilty vide judgment and order dated 30.03.2009. Aggrieved by the same, convict preferred appeal before learned Additional Sessions Judge, Hingoli vide Criminal Appeal No. 14 of 2009 assailing the judgment of learned trial court. However, learned Additional Sessions Judge, Hingoli confirmed and maintained the judgment and order of trial court by dismissing the said appeal.

It is the above judgments which are now taken exception to by filing instant Revision by invoking Section 397 of the Code of Criminal Procedure [Cr.P.C.].

SUBMISSIONS

On behalf of the Revisionist:

3. Learned senior counsel appraised this Court that, present revisionist was working as a driver in Zilla Parishad, Hingoli. That he was also active member of Class IV employees' union. That, complainant was aggrieved due to his transfer allegedly at the instance of the union. Out of vengeance, complainant lodged false report alleging commission of above offence. Learned senior counsel

pointed out that there are allegations of barging in the chamber and scuffling with the complainant. However, according to learned senior counsel, apparently incident had taken place around 8.30 p.m. which were obviously not working hours, as complainant himself and other prosecution witnesses have admitted that office hours are from 10.30 a.m. to 5.45 p.m. That, there was no evidence suggesting complainant doing any official work and that the same was obstructed. That, merely because he was in chamber, allegations of obstruction from duty and beating are levelled. Learned senior counsel submitted that essential ingredients for none of the charges, with which he was booked, are available in the prosecution evidence. Both the courts below, i.e. learned trial court as well as the first appellate court, failed to consider and appreciate the essential requirements for holding charge proved.

4. Learned senior counsel took this court through the evidence of PW1 and PW2 and would submit that they are all interested witnesses. He pointed out that even learned trial court has observed in its judgment that there is no evidence on record to show that complainant was doing some official work and was thereby obstructed. Still, guilt has been recorded for said charge. Learned senior counsel pointed out that revisionist has clean antecedents. He

was 50 years of age when the incident took place, but his age has also not been considered. Even there was no copy of appointment of complainant on record. Testimony of PW2 was hearsay and as such, there was no corroboration to the testimony of complainant PW4.

5. As regards to allegation of beating is concerned, learned senior counsel submitted that medical expert admitted that injuries noticed by him are possible on account of fall. Therefore, it was doubtful whether the injury was in consequence of alleged incident and as such, learned senior counsel submitted that, case of prosecution was weak and ought not to have been accepted by both the lower courts. Hence, he prays to allow the revision by setting aside the impugned judgment.

On behalf of the State:

6. Strongly opposing the above submissions, learned APP pointed out that complainant was a gazetted officer. He was a scientist and was involved in the work of geology and ground water survey. Therefore, being a scientist and researcher, he had no time limit of working. Apparently, incident had taken place in the chamber and office and as such, official work was going on. Learned APP pointed out that merely because incident took place after office hours would

not mean that complainant was not doing official work. Learned APP also took this Court through the observations of both, learned trial court as well as learned first appellate court, and she submits that there is correct appreciation. According to her, judgments are infallible and deserve no interference.

EVIDENCE ON RECORD

7. In support of its case, prosecution has examined in all five witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Shalik Randage, watchman serving in the Ground Survey Development Agency [GSDA], claims to be the eye witness. Regarding the incident, he deposed at Exhibit 16 that on 09.10.2006 at about 8.30 p.m., when informant was busy doing official work and he himself was assisting informant, accused came in the office and started raising dispute with informant by asking whether the office was property of his father. That, accused obstructed the informant for half an hour and gave blows of fist to informant and threatened him. That, accused gave blow on the cheek of the informant due to which, he sustained bleeding injury to left side lower lip. That, thereafter accused went away. This witness deposed that when he tried to intervene and settle the dispute, accused threatened him also.

- PW2** Rajabai Amale, peon in the office of GSDA deposed about knowing accused and informant. That, on the day of incident, she was on duty till 5.30 p.m. On the next day, when she went to office, she was informed about the dispute between accused and informant.
- PW3** Vithal Karape, Medical Officer attached to Civil Hospital, Hingoli, who examined informant, has deposed about noticing one contused lacerated injury and one abrasion over inside lower lip on the left side. He issued certificate Exhibit 20.
- PW4** Ravindra Shelar, informant, in his evidence at Exhibit 22, initially deposed about serving as In-charge of Senior Geologist from 2005 to 2007. Regarding the occurrence, he deposed that on 09.10.2006, while he was performing official duty and PW1 Shalik was also present there, accused barged into his office without permission and asked him why he informed his senior about accused coming to office in drunken state and why accused was not allowed to make phone calls from office, and saying so, accused suddenly caught his collar and gave fist blow on his mouth, due to which he suffered bleeding injury. Accused then gave fist blows on his stomach and back, obstructed him from getting up from chair and also threatened to kill him. That, PW1 Shalik tried to intervene, but accused threatened him also. After 30 to 45 minutes, when accused went away, he initially intimated the fact to his senior and then informed police telephonically. Thereafter police came and arrested accused and was taken to police station. Informant

was also made to accompany them to police station, where he lodged report Exhibit 23.

PW5 PI Govind Paul is the Investigating Officer, who deposed about all the steps taken by him till filing of the charge sheet.

ANALYSIS

8. Here, undisputed fact is that, informant worked as In-charge Senior Geologist, whereas, present appellant worked as Driver in the same Department. Appellant was chargesheeted and tried by learned JMFC and on appreciation of evidence, held guilty for offence under Sections u/s 332, 353, 341, 506 of IPC. Appellant's attempt to get this judgment overturned in appellate court went futile, as trial court's judgment has been upheld by first appellate court. Hence, instant revision.

9. Conviction being recorded for above offences, it would be apt to spell out the essential ingredients for each of the offence for which guilt is recorded.

“332. Voluntarily causing hurt to deter public servant from his duty.-

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public

servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Ingredients of offence.-

- (1) Hurt was caused to a public servant;
- (2) It was caused while such public servant was acting in the discharge of his duty as such; or
- (3) It was caused to prevent or deter him from discharging his duty as such public servant; or
- (4) Such hurt was in consequence of anything done or attempted to be done by such public servant in lawful discharge of his duty.

“341. Punishment for wrongful restraint.—

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”

Ingredients of offence.-

- (1) Accused obstructed a person;
- (2) He did it voluntarily;
- (3) It prevented such person from proceeding in certain direction in which he had the right to proceed

“353. Assault or criminal force to deter public servant from discharge of his duty.—

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Ingredients of offence.-

- (1) Accused assaulted or used criminal force to a public servant;
- (2) Such public servant was then acting in the discharge of his duty;
- (3) Accused assaulted with the intention of preventing or deterring such public servant from discharging his duty, or
- (4) It was used in consequence of anything done or attempted to be done by the said public servant.

“506. Punishment for criminal intimidation.—

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—
and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause

an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Ingredients of offence.-

- (1) Threatening a person with any injury-
 - (a) to his person, reputation, or property; or
 - (b) to the person or reputation of anyone in whom that person is interested.
- (2) Threat must be with intent-
 - (a) to cause alarm to that person, or
 - (b) to cause the person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or
 - (c) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

10. In the light of above legal requirements, admittedly, evidence of informant is of significance and to ascertain whether the same is credible, evidence of PW1-staff is also equally important to see whether informant’s testimony has sufficient corroboration.

11. PW4 Informant’s evidence reproduced above shows that on relevant day, around 8.30 p.m., appellant barged in his chamber. This not being refuted or denied, occurrence has taken place at work

place. Evidence of informant PW4 shows that appellant questioned him for informing superiors regarding appellant coming to office under influence of liquor and for objecting to the use of office telephone connection, and thereafter, he gave fist blows. So much part of the informant's evidence has not been rendered doubtful in spite of cross examining informant.

12. PW1 Shalik who worked as a watchman, is examined by prosecution as an eye witness, and he lends support to the informant's evidence on the point of appellant visiting office of informant at 8.30 p.m. on 19.10.2006 and raising dispute by questioning informant whether it was his father's property. This witness has categorically stated that appellant obstructed informant and even beat and threatened him. He is very categorical about blow being given and bleeding from lower lip. This witness has also deposed about he himself intervening to settle the matter. Even his evidence has virtually remained intact as regards to above occurrence is concerned.

13. Evidence of PW3 Vithal Karape, who claims to have occasion to examine PW4 and issue certificate Exhibit 20, is also not questioned or rendered doubtful. He is an independent authority, who examined PW4 with history of beating.

Therefore, above discussed evidence suggests establishment of occurrence and offence.

14. The principal grounds raised are, firstly, that occurrence having taken place at 8.30 p.m., it being beyond regular office hours, there was no obstruction in official work. Such submission has no merit or force. It is pertinent to note that incident had taken place while informant was in his chamber. Whether he was doing official work or not, is not relevant, more particularly in the backdrop that informant was working as research scientist in Ground Water Survey Department. Informant's very version that, he was abused and beaten while in his chamber itself is sufficient to hold that it amounts to obstruction in official duty. There is no need to further specifically demonstrate that actual work was in progress or not. By virtue of very presence in the chamber meant to do official work itself attracts the rigors of the offence.

15. Second ground raised is that, merely because appellant was active member of union, and assuming him to be instrumental in transfers of officers, he was falsely implicated, also is not at all an attractive ground to disbelieve informant's evidence which is finding

support from independent watchman. Mere passing suggestions given in cross which are flatly denied and turned down, would not come to the rescue of appellant to doubt the prosecution story which is thoroughly examined by not one court but two courts i.e. trial court and first appellate court, and have thereby taken consistent view about charges being brought home.

16. In the considered opinion of this Court, in the light of available evidence and on going through the reasons and conclusion drawn by both, learned trial court and learned first appellate court, even this revision court concurs with the view taken by such courts. As no case is made out on merits so as to interfere, the following order is passed:

ORDER

The criminal revision application is dismissed.

[ABHAY S. WAGHWASE, J.]