



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

CRIMINAL APPEAL NO. 963 OF 2018

The State of Maharashtra
through Police Station Bhingar Camp,
Taluka and District Ahmednagar.

..Appellant
(Ori. First Informant)

Versus

Asif Abid Husen Sayyad
Age: 30 years,
R/o. H.No.270, Sadar Bazar,
Behind Bhingar Urban Bank,
Taluka Bhingar, District Ahmednagar.

....Respondent
(Original Accused)

.....
WITH

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 264 OF 2018**

The State of Maharashtra,
through Police Station Bhingar Camp,
Taluka and District Ahmednagar.

..Applicant
(Ori. First Informant)

Versus

Asif Abid Husen Sayyad
Age: 30 years,
R/o. H.No.270, Sadar Bazar,
Behind Bhingar Urban Bank,
Taluka Bhingar, District Ahmednagar.

..Respondent
(Org. Accused)

.....
Advocate for Appellant - State : Mr.S.M.Ganachari
Advocate for Respondent – Accused : Mr. G.R.Syed
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15 APRIL, 2024

PRONOUNCED ON : 25 APRIL, 2024

JUDGMENT :

1. By consent of both the parties, matter is taken up for final hearing at the admission stage.
2. Both Criminal Appeal No.963 of 2018 and Application for Leave to Appeal by State No.264 of 2018 are arising out of one and the same judgment passed by learned Additional Sessions Judge, Ahmednagar dated 01-10-2018 in Sessions Case No.32 of 2016.

IN BRIEF FACTS LEADING TO TRIAL

3. The gist of prosecution case in trial Court was that complainant was working as Scavenger in Cantonment Board, Bhingar, Ahmednagar. On 29-01-2015 while he was on duty and was in front of house of respondent - Asif Sayyad, a four wheeler vehicle was parked on the road thereby obstructing the lifting of garbage. Complainant had requested accused respondent to remove the vehicle, which triggered the incident of giving fist blows, use of filthy language, threats and caste abuse. Hence, on complaint of Mohan Ratan Rokade, Bhingar Police Station registered crime and on investigation, accused was chargesheeted and tried vide Sessions

Case No.32 of 2016. The trial ended in conviction only for offence under Sections 353, 332, 325 and 323 of the Indian Penal Code (IPC) and acquittal from charges of under Sections 504, 506 of the IPC and under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (the SC and ST Act).

However, learned trial Judge instead of at once sentencing convict to suffer imprisonment, gave benefit of provisions under Section 4 of the Probation of Offenders Act.

SUBMISSIONS

On behalf of State :

4. Learned APP submitted that prosecution was launched against present respondent for commission of offence under Sections 353, 332, 325, 323, 504, 506 of the IPC and under Section 3(1)(x) of the SC and ST Act. That on conclusion of trial, though conviction was recorded for offence under Sections 353, 332, 325 and 323 of the IPC, instead of awarding sentence, learned trial Court has given benefit of Probation of Offenders Act. That such benefit ought not to have been extended in view of case being non-bailable, cognizable and exclusively triable by Court of Sessions. That there was clear and overwhelming evidence and therefore, there ought to have been

proper sentence. That the case did not warrant benefits to be extended under the Probation of Offenders Act. Therefore, according to learned APP, judgment and order of trial Court to that extent needs to be interfered and set aside and respondent is liable to be sentenced to suffer imprisonment.

On behalf of Respondent :

5. In answer to above, learned Counsel for respondent submitted that though learned trial Judge held appellant guilty for above charges, taking into consideration the age and background in which incident took place and considering the fact that there was no criminal antecedents, benefit of Probation of Offenders Act was given. He further added that Courts are empowered to exercise powers to give benefit of Probation of Offenders Act in deserving cases. That case in hand fell into such category. That mere effect to the Statute of Probation of Offenders Act has been given on due satisfaction. That as respondent was entitled for the benefit and as he was qualified for the same, learned trial Court has given the benefit. That the order being perfect and legal, he prays that same may not be disturbed.

ANALYSIS

6. In the light of above submissions, two points arise for determination and consideration for this Court.

(a) Firstly, when trial Court convicted respondent for offence under Sections 353, 332, 325 and 323 of the IPC whether trial Court was justified in giving benefit under Probation of Offenders act.

(b) Secondly, whether trial Court was justified in acquitting accused from charge of Sections, 3(1)(x) of the SC & S T Act.

Point No.1 :

7. After considering submissions of both sides and on going through impugned judgment dated 01-10-2018 passed by the learned Additional Sessions Judge, Ahmednagar in Session Case No.32 of 2016, it is clear that convict - respondent was made to face trial for offence under Sections 353, 332, 325, 323, 504, 506 of the IPC and under Section 3(1)(x) of the SC and ST Act.

8. The gist of prosecution case in trial Court was that complainant was working as Scavenger in Cantonment Board, Bhingar, Ahmednagar. On 29-01-2015 while he was on duty and was in front

of house of respondent - Asif Sayyad, a four wheeler vehicle was parked on the road thereby obstructing the lifting of garbage. Complainant had requested accused respondent to remove the vehicle, which triggered the incident of giving fist blows, use of filthy language, threats and caste abuse. Hence, on complaint of informant, Bhingar Police Station registered crime and on investigation, he was chargesheeted and tried for above case.

9. Record shows that prosecution had adduced evidence of as many as six witnesses and also relied on documentary evidence.

10. After analysis and appreciation of entire evidence on record, learned trial Court reached to a finding that prosecution had established charges under Sections 353, 332, 325, 323 of the IPC and therefore, accused was called upon to answer on the quantum of sentence. After hearing accused, his Counsel as well as learned APP, learned trial Court observed in paragraph 31 of the judgment that there was no previous animosity between the parties and there was no premeditation on the part of accused to deter public servant or to carry out assault. Learned trial Court also observed that there is no material to show that accused had criminal antecedents and

therefore, taking into consideration the background of the incident taking place all of a sudden, learned trial Court extended benefit of Probation of Offenders Act and accordingly, passed order to that extent.

11. Learned APP has questioned the above judgment also on the ground that it was not a case to extend such benefit, more particularly, it being an offence against public servant, offence to be cognizable and exclusively triable by Court of Sessions.

It is true that the alleged episode resulted into conviction for offence under Sections 353, 332, 325 and 323 of the IPC. But apparently, such offences are not precluded from extending benefit of Probation of Offenders Act. It is fairly settled that such benefits cannot be given in grave and serious offences wherein offences for which imprisonment for life or death sentence is provided. Section 4 of the Probation of Offenders Act applies when conviction is for offence punishable with imprisonment for less than seven years. In umpteen judgments, it is time and again held that powers under Section 4 of the Probation of Offenders Act vests with the Courts and while extending benefit, Court has discretion, having regard to the circumstances in which the crime was committed, the age, the

character and antecedent of the offender, to whether grant or refuse probation. Discretion is expected to be exercised judiciously and by assigning sound reasons.

12. Here incident had erupted all of a sudden, which commenced on abuses, followed by quarrel and ended up in beating. There was no previous acquaintance or enmity. Learned trial Court has, after hearing both sides on sentence, made detailed observation in paragraph 31 of its judgment as to why instead of at once sentencing convict respondent to suffer imprisonment, benefit of Probation of Offenders Act is required to be given. Thus, the object and scope of the said Statute has been borne in mind and in view of the peculiar facts and circumstances involved in the case in hand and only on due satisfaction, benefit of Probation of Offenders Act seems to have been given. Resultantly, no illegality or infirmity can be said to be committed by learned trial Judge while exercising above discretion.

Point no.2 :

13. Second challenge is pertaining to acquittal from offence under the SC and ST Act.

By filing Application for Leave to Appeal By State No.264 of 2018, State is also intending to file appeal against judgment and order of acquittal of respondent from offence under Section 3(1)(x) of the SC and ST Act.

14. According to learned APP, on complaint and thorough investigation, charges were also framed for commission of offence under Section 3(1)(x) of the SC and ST Act alongwith offence under provisions of the IPC. Learned APP pointed out that there is clear evidence of complainant that he was humiliated and abused by referring to his caste. There was independent eye witness account but learned trial Court has overlooked the same without assigning sound reasons and acquitted accused from offence under Section 3(1)(x) of the SC and ST Act. Consequently, according to learned APP, there is improper appreciation of evidence and so State is desirous of filing appeal. Hence, he seeks leave.

15. In answer to above, learned Counsel for accused pointed out that essential ingredients for attracting offence under the SC and ST Act are patently missing. That neither complaint nor evidence was indicating that intentionally and knowing complainant to be

belonging to Scheduled Caste category, there was humiliation and caste abuse. Learned counsel pointed out that accused respondent was not aware of the caste of complainant. That incident of mere verbal exchange has taken place. That there was no intentional humiliation or derogatory remark to hurt the feelings of complainant on caste basis, therefore, learned trial Court has rightly acquitted accused from such charge and hence, he prays to refuse leave for want of merits.

16. In the light of above issue, if evidence on record is visited and put to minute scrutiny, it is emerging that in the very FIR at exh.11, one does not come across material suggesting humiliation on caste basis. Complainant has not given his own caste and has further not stated that accused knew that he belongs to said caste and still deliberately humiliated him by hurling caste abuses. Consequently, very FIR is silent about caste abuse. Therefore, testimony in witness box amounts to improved version. With such situation wherein there is no material for attracting essential ingredients for slapping charge of Section 3(1)(x) of the SC and ST Act, no fault can be found in acquittal of respondent to that extent. Therefore, no purpose would be served with such material on record by granting leave to the State

to prefer appeal against acquittal under said provisions.

SUMMATION

17. To sum up, here on re-appreciation of the evidence, this Court is satisfied that inspite of conviction, accused respondent had qualified to receive benefits of Probation of Offenders Act. Mandate of law has been borne in mind by the learned trial Judge while extending such benefit. Similarly, no good ground is made in Application for Leave to Appeal by State to grant leave to question the acquittal of respondent accused under the provisions of the SC and ST Act. Accordingly, I proceed to pass following order :

ORDER

- I. Criminal Appeal No.963 of 2018 is dismissed.
- II. Application for Leave to Appeal By State No.264 of 2018 is rejected.

(ABHAY S. WAGHWASE)
JUDGE