

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.106 OF 2017

1. Shankar Chhana Vasava

Aged about 30 years,
R/o Athal, Sai Villa,
Room No. 303, Silvassa.

2. Ashwin Ramnaresh Sinh

Aged about 31 years,
r/o Bhurkud Faliya
Silvassa.

3. Chetan Makan Patel

Aged about 32 years,
r/o Bhast Faliya,
In rented room of Janubhai
Silvassa.

4. Avdesh Sampat Yadav

Aged about 32 years,
R/o Athal, Sai Villa,
Room No.311, Silvassa.

.... Applicant

Versus

The State (Union Territory) Dadra and Nagar
Haveli.

... Respondents

Ms. Jane Cox a/w Mr. Rahil Fazelbhoy i/b. Mr. Rahul Kamberkar,
Advocate for Applicant.

Mr. Harsh Dedhia i/b. Mr. H.S. Venegavkar, Advocate for Respondent
No.1.

CORAM : S. M. MODAK, J.

DATE : 22nd & 26th MARCH 2024

JUDGMENT:-

1. The issue involved in this Revision Application is whether the trial Court i.e. the Court of Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa and the Court of Sessions Judge, Dadra Nagar Haveli have committed illegality in convicting first four Applicants for the offences punishable under Sections 341, 323 r/w 34 of the Indian Penal Code (for short “IPC”). They were charge-sheeted by the Silvassa Police Station for assaulting the first informant - Suresh Madambil Kalerical on 29th March 2007 at about 22.30 hours at village Athal, Sindhur Faliya.

2. After trial, the sentence imposed is as follows:-

- a. for offence under Section 341 of IPC, imprisonment for one month.
- b. for offence under Section 323 of IPC, imprisonment for three months.

Whereas, all of them were acquitted for the offences punishable under Sections 504, 506 r/w 34 of the IPC. This is as per judgment dated 9th

December 2014. Whereas, learned Sessions Judge as per judgment dated 31st January 2017 was pleased to confirm the conviction as well as sentence.

3. This Court as per order dated 17th February 2017 was pleased to admit the Revision. That is how, I have heard learned Advocate Ms. Jane Cox for the Applicants and learned Advocate Shri Harsh Dedhia for Respondent No.1. Both of them have advanced arguments on the issue of scope of revision as well as on the point of appreciation of evidence made rightly or wrongly by both the Courts below. On the point of scope of revision, both of them also relied upon few of the judgments. Ms. Cox relied upon the following judgments:-

Scope of Revision

(a) ***Joseph Vs. State of Kerala***¹.

No doubt, the Hon'ble Supreme Court dealt with the issue of appreciation of evidence but it is not on the background of concurrent finding of conviction but there was a judgment of acquittal and issue was about appreciation by the Appellate Court.

1. 2003(1)SCC 465

(b) *State of Gujarat Vs. Bharwad Jakshibhai Nagribhai and Ors.*²

Similarly, in this case, the Division Bench of High Court of Gujarat has dealt with the Appeal filed by the State against the judgment of acquittal. In an Appeal against first order there is a vast scope for appreciation of evidence.

(c) *Amit Kapoor Vs. Ramesh Chander and Ors.*³.

No doubt, there was a proceeding of revision and the principles for quashing of a charge either under Section 397 or 482 of Code are laid down. Such issue arises at pre-trial stage. The scope of inquiry is different. My attention is invited to paragraph 8. If finding is recorded in absence of evidence or material evidence is ignored, revisional jurisdiction can be invoked. These observations were on the basis of judgments quoted involving appreciation of evidence recorded during trial. In the same judgment, in paragraph 9, it is observed “*revisional jurisdiction of the higher court is very limited and cannot be exercised in routine manner.*”

(para 9)

2. 1989 SCC OnLine Guj. 40

3. MANU/SC/0746/2012

(d) **Ram Briksha Singh Vs. Ambika Yadav**⁴.

Wherein after first trial the matter was remanded and the order of remand was challenged before the Hon'ble Supreme Court. There is contention raised that the High Court has re-appreciated the evidence in revision. It was turned down for the reason that the matter was not decided finally on merits but only remanded.

(e) **Madhukar Gaurishankar Swami Vs. State of Maharashtra**⁵

Wherein learned Single Judge of this Court has set aside the concurrent finding of facts and conviction. It was the traffic offence. There was a conviction on the evidence of 2 witnesses. In fact, when there were 17 witnesses only 2 witnesses have been examined and the 2 witnesses have not seen the accident. The principle was reiterated “revisional jurisdiction can be exercised in order to ensure that no illegality is committed in respect of the procedure that is required to be observed or in respect of the legality of the order”.

4. 2004 Cri.L.J.3115

5. Cri. Revn. Application No. 83 of 1997

4. As against this, learned Advocate Shri Dedhia relied upon the following judgments:-

(a) ***Malkeet Singh Vs. State of Chattisgarh***⁶

The Hon'ble Supreme Court reiterated principle about limitation on powers of the revisional Court and how they are different from the powers of the Appellate Court. (para 8)

(b) ***Manju Ram Kalita Vs. State of Assam***⁷

Three Courts have already done their jobs and the matter reached to Hon'ble Supreme Court. The Hon'ble Supreme Court has refused to interfere in the findings. Even two views were possible, concurrent findings cannot be interfered with unless there is exceptional circumstances. (para 10)

Conclusion

5. After reading all these judgments, the principles laid down therein are the same. There are limitations on the powers of the Revisional Court. There is a purpose behind restricting the power. Though these restrictions are not enshrined in the provisions under Sections 397 and 401 of Cr.P.C., still Constitutional Courts have

6. Cri. Appeal No.915 of 2022

7 2009(B) SCC 330

interpreted the law in that manner.

6. When the case is tried before the trial Court, it is expected that accused should take all the defences which are available. However, when there is a right of Appeal recognized by the Code of Criminal Procedure, therein he can request the Court to re-appreciate the evidence and expect the Appellate Court to correct the findings. In spite of this, if he feels and there is occasion to approach this Court, if this Court will undertake the exercise of appreciating the evidence again, there will not be an end to litigation.

Appreciation of evidence

7. **What is appreciation?** Appreciation of evidence is nothing but exercise of marshaling the evidence i.e. to say :--

- a. whether the testimony is reliable and trustworthy.
- b. whether one piece of evidence corroborates to other piece of evidence.

It does not mean that before the revisional Court there is no scope for accused to challenge the concurrent findings. It has been interpreted

“when the findings are recorded without considering the piece of evidence or recorded by wrongly considering

piece of evidence.”

the findings are said to be perverse and then there is a scope.

8. Ultimately, the trial Court while doing exercise of appreciation of evidence has to consider all the circumstances brought before them and at the end they have to come to a right conclusion. It must be supported by reasoning. Mean to say, “*circumstances brought on record on behalf of the prosecution and the circumstances which are brought on record by the defence need to be considered*” in totality. The trial Court has to pose these circumstances against each other and then conclude who is right and that too on the touchstone of the proof beyond reasonable doubt.

9. By considering these principles, I have gone through the evidence and the findings recorded by both the Courts below. In all there are 4 witnesses. They are as follows:-

1.	P.W.1	Suresh Madambil Kalerical	First informant
2.	P.W.2	Nilesh R. Patel	Panch
3.	P.W. 3	Dattubhai Patel	IO
4.	P.W.4	Dr. Sunil Ramesh Patel (on the basis of examination and certificate issued to first informant and also to Accused No.2 – Ashwin Seth by earlier doctor.	Medical Officer

Prosecution evidence

10. The case depicted from the prosecution evidence is as follows:-

- (i) First informant – Suresh Kalerical is working in packing department of IPCA Laboratory Company as Assistant Manager. His job is to supervise the work of packing done by the workers. He knows all the accused persons working in packing department.
- (ii) They were not doing their work properly and hence, he has scolded them. The incident took place on 29th March 2007 at about 10.30 pm. He was returning home from office. When he came near Police Chowki he saw four accused persons standing there. Accused No.2 – Ashwin was also riding his splendor motorcycle. He gave dash to the motorcycle of the first informant. All the three accused beat the first informant with the help of stone and fist blows.
- (iii) First informant called the employees from the Company and he was shifted to Vinoba Bhave Civil Hospital in the company ambulance.

- (iv) He lodged complaint on 29th March 2007 at about 20.30 hours.
- (v) During the investigation P.W.3 has recovered helmet from the spot and also attached the motorcycles belonging to the first informant and Accused No.2.
- (vi) Dr. Manoj Singh from Vinoba Bhave Civil Hospital examined first informant and Accused No.2 also. However, he was not available at the time of trial on account of study leave. In place Dr. Sunil Patel gave evidence on the basis of examination done by Dr. Manoj Singh. He is acquainted to his handwriting.

Proved facts/Inferences

11. From the above evidence, we can see certain facts are proved/certain inferences can be drawn :-

- a) **First informant Suresh received injuries** as deposed by P.W.3. He was examined on 29th March 2007 at about 11.45 pm.
- b) **Accused No.2 Ashwin also received injury** by way of abrasion to his left knee joint. He was examined in the

same hospital in midnight of 29th March 2007 and 30th March 2007 at 0.20 hours.

- c) **First informant Suresh and all accused were working in the same company.** Though Investigating Officer was cross-examined on the point of collection of documents about the service of accused in packing department, during the cross-examination of material witnesses, suggestion was given that all the accused persons were office bearers of the Union and there was some dispute and settlement agreement was yet to be arrived at.
- d) It is a matter of record **on the point of actual assault except first informant no other witnesses were examined.** Though it has come in the evidence that the persons have assembled there after first informant shouted.
- e) It is a matter of record that **any representative from the company who had come on the spot for shifting first informant to hospital is not examined.**

12. On the basis of these proved facts/evidence/inferences on record this Court has to scrutinize the legality of the findings.

Submission

13. Learned Advocate Ms. Cox made the following submissions:-

- (a) there are improvements in the evidence of the first informant i.e. the averment in the FIR and the evidence given before the Court.
- (b) weapon of offence was not seized during the investigation.
- (c) the panchanama about seizure of helmet, seizure of motorcycle of first informant was not proved (though pancha witness P.W.2 and the Investigating Officer were examined) and the panch has resiled. The trial Court has given a finding that no panch is examined. This is incorrect finding. (internal page paragraphs 15 and 16 of the trial Court judgment.)
- d) Both the Courts below have not appreciated the evidence on the point of injuries to Accused No.2.
- e) There is no appreciation that even though incident took

place on 29th March 2007 at about 10.30 pm, the FIR is lodged after almost 24 hours i.e. on 30th March 2007 and there is no explanation offered.

- f) The trial Court has not appreciated the evidence on the point of motive for false implication i.e. to say, the settlement agreement was to be executed and the first informant falsely implicated the accused for pressurizing them. The findings are at the bottom of internal page 42 of the trial Court judgment.
- g) The trial Court has referred about the judgment in case of *Joseph Vs. State of Kerala*⁸ on the point of reliability of sole witness. According to her, the facts of that case were not considered by the trial Court.
- h) On the point of delay, she relied upon the observations in case of *Ramji Surjya Padvi & Anr. vs. State of Maharashtra*⁹.

Defense

14. According to her, there was no incident of assault and in fact,

8. AIR 2003 SC 507

9. (1983) 3 SCC 629

there was an accident in between the motorcycle driven by the first informant and motorcycle driven by Accused No.2. According to her, if the Accused No.2 along with others have assaulted first informant why he should go for his medical examination.

Prosecution submission

15. As against this, learned Advocate Shri Dedhia made the following submissions :-

- (i) Evidence of first informant is reliable, trustworthy and it is settled law that conviction can be based on the evidence of a single witness.
- (ii) According to him, there is correct appreciation which does not warrants interference.
- (iii) The fact that Accused No.2 also received injuries itself indicates that he was present at the spot at the time of incident.
- (iv) There is corroboration to the oral evidence by way of medical evidence;
- (v) There are minor discrepancies in the FIR and oral evidence

and that does not wipe out the evidence of P.W.1.

(vi) He referred to the observations in Point Nos.3, 4 and 5 from the judgments in case of *State of Gujarat vs. Bharwad* (supra) which are reproduced in paragraph 8 of the trial Court judgment on page 37.

16. On this background, this Court has to ascertain whether there is illegality in the findings.

17. As one urgent matter is mentioned before me, dealing with the assignment of Shri Justice R.N. Laddha, I stopped the dictation and pass over it. Now, it is also almost 5.53 pm. Hence, further dictation will be given on Tuesday.

18. Stand over to **26th March 2024 'High on Board**.

Continued

Grounds for revision

19. The grievance about illegality in the findings recorded by the trial Court needs to be assessed on the following aspects:-

(a) Whether the evidence of P.W.1 is reliable and trustworthy?

- (b) Whether there are certain lapses in the investigation
which affects the outcome of the case?
- (c) Whether not examining any witness will materially affect
the prosecution case as a whole?
- (d) Whether there is a delay in FIR and so whether it affects
the prosecution case as a whole?
- (e) Whether these grounds can be considered in revisional
jurisdiction?

Evidence of P.W.1

20. There cannot be a dispute about this proposition of law that conviction can be based on the evidence of single witness provided his evidence must satisfy certain tests. What are **the tests laid down** by the Hon'ble Supreme Court in various judgments? It includes :--

- a. whether the said witness has done any **improvement** from his police statement while giving evidence before the Court,
- b. whether he is giving **true account** of the incident that has taken place i.e. to say, the incident as per the prosecution case and it need to be tested on the touchstone of version

put up by the accused.

- c. It can be assessed from the view point that whether he **immediately taken help of police.**
- d. There is one more angle. Though it does not relate to testimony of eye-witness, it relates to **overall prosecution case** i.e. to say, if statement of any witness is recorded or not during investigation who is available to support the version of the injured eyewitness.
- e. there is witness whose statement is recorded during investigation **but he is not examined**, then what will be **the effect on overall prosecution case.**

21. With this perspective when I have read the evidence of P.W.1 – first informant, though certain improvements are pointed out on behalf of the Applicant, I do not feel that they pertain to the material particulars.

22. My attention is invited to contents of paragraph 2 of his cross-examination. It pertains to holding of stick by Applicant Shankar and assault by him with the help of the stick. It pertains to Applicant Chetanbhai Patel and Avadesh Yadav assaulting him with fist and

blows. **When the contents of FIR are perused** what I find is:--

- a. he has stated all the Applicants were standing near the police chowki and having blocked his way.
- b. Initially, the Applicant No.2 Ashwin gave a dash to his motorcycle from the rear side as a result he fell down. In fact, the Applicant Ashwin has also fell down.
- c. Further, he has stated Applicant – Shankar ran towards him and uttered bad words and gave blows on his back.
- d. At that time, Applicant - Chetan was possessing a stick and he gave a blow on the left leg of the first informant and then Applicant – Chetan handed over the wooden stick to Applicant - Shankar and Shankar also beat him with the help of the stick on his helmet. He also beat him with fist blows on his right hand side and left hand side e. whereas Applicant Ashwin had a stone in his hand. He hits him on his helmet.
- f. Whereas, Applicant Avdesh and Chetan removed his helmet and Applicant Ashwin hits him with the help of stone.

g. Further he stated he shouted and the persons in the vicinity came to the spot and as a result, Applicants ran away. Then he called Personal Manager of the Company through mobile and the first informant was shifted to Vinoba Bhave, Civil Hospital, Silvassa from the company mobile. He has given name of Mr. Pravin Driver, and Security Officer S.N. Yadav.

23. Several improvements are pointed out to me. **There are improvements which have occurred due to passage of time and it does not deal with the material particulars.**

Versions put forth before Trial Court.

24. There are two versions available before the Courts below:-

- (a) One is prosecution version about assault on the first informant by all these Applicants.
- (b) Whereas, the Applicant Ashwin had given a counter version.

In fact, **his motorcycle dashed the motorcycle of first informant and both of them have fallen down.** In other words, he has denied the

facts narrated by the first informant. We can find this line of defence from the manner of cross-examination of first informant (on internal page 5 page 73).

Following are the suggestions given to him :--

- a. A suggestion “on 30th March 2007 no incidence has taken place”.
- b. Further suggestion “*first informant fell from his motorcycle and sustained injuries*”.
- c. Suggestion was also given to Investigating Officer – P.W.3 on the following points:-
 - a. “complainant fell from his motorcycle and that is how, sustained injuries”.

25. In 313 statement Applicants have not stated anything as to how the incident took place as per their own version. They gave only an explanation “*only for pressurizing them and to remove them from the job the witness have reported falsely*”.

26. It is also true that the first informant in the FIR and before the Court has stated about Applicant - Ashwin fallen down on the ground. The prosecution by examining P.W.1 -Suresh Kalerical and P.W. 4 – Dr.

Sunil Patel have brought on record the injuries caused to Applicant – Ashwin. There is **abrasion to the left knee joint** of Ashwin whereas the first informant has **got fresh bruises** one of them is on right shoulder tip and another is over tibia and 3rd on left occipital region of skull.

27. It is true that this medical officer has not examined both the injured but he deposed on the basis of the record and as he has acquainted with the handwriting of the Dr. Manoj Singh who has examined both of them. On the basis of the knowledge and experience this Doctor opined that injuries to both of them were possible if there will fall on the ground. Learned Advocate for the Applicants tried to take advantage of this answer to buttress his submission that injuries are not outcome of the assault but due to fall on the ground.

Findings about injuries to Applicant/accused Ashwin

28. In order to assess the correctness of finding on this aspect, I have perused the observations by the learned trial Judge. Learned trial Judge has dealt with this aspect in paragraph No.s 6, 7, 9, 11 and 12 of the judgment. Trial Court has also considered what are the injuries to the Applicant Ashwin but it will be relevant to consider the observation of

the trial Court in respect of burden to explain the injury on the person of Applicant – Ashwin. In paragraph No.9 it is observed :--

“accused have not explained as to how Accused – Ashwin sustained injury at late night and why he was examined in Vinoba Bhave Hospital. So said fact strongly prove the presence of accused Ashwin on the spot of incident”.

29. One can understand about finding about injury on the knee joint of the Applicant – Ashwin **but whether the finding that Accused has not explained injury to Ashwin can be accepted?** It can't be. Because as per accepted rules of burden of proof, there is no burden on accused. Burden on prosecution :--

- a. is to prove facts alleged to have taken place and
- b. even to prove the outcome of incident if injuries are caused to the accused.

How you can put burden on accused and hold him responsible for not explaining the injuries ? **This is total wrong approach on the part of both the Courts below.** If while appreciating the evidence, if the trial court has wrongly applied the rules of evidence and came to certain

conclusion, **certainly the revisional court has got scope to interfere. And it is done by me.** If there are injuries caused to the accused during the incident, **there are options available to accused person. Either he may :--**

- a. deny his involvement and also presence or
- b. he may say that he was present and this is the explanation for injuries caused to him.

30. If he takes upon himself the responsibility to explain injury, the burden is not as heavy as that on prosecution. When the evidence is perused particularly the evidence of first informant Suresh and of I.O. P.W. No. 3, we may find that only suggestion was given “the first informant fallen from motorcycle”. But **there are no suggestions as to how applicant Ashwin sustained injuries.** It means the applicants including applicant Ashwin **have chosen to remain silent on this aspect.** Ultimately that is the their choice.

31. Still the prosecution is not relieved from the responsibility of explaining the injuries caused to the accused. They can do it in different manner :-

- (i) either by giving explanation through the eye-witness

or

(ii) through the Investigating Officer also.

In this case P.W.1 eye-witness in the FIR (we both fall down from motorcycle) as well as in evidence stated Applicant Ashwin has fallen on the ground. Can it be considered as explanation given on behalf of the prosecution?

31. It may happen that due to the dash given by the Applicant Ashwin, first informant Suresh has fallen on the ground and also the applicant Ashwin. **But the issue does not rest there.** The question is if the Applicant Ashwin has fallen on the ground further question arises in what manner he has beaten the first informant. Either the **Applicant Ashwin might have stood up** and proceeded towards first informant and then beated him. **Other possibility** may be after falling on the ground no further incident might have taken place as put up on behalf of the Applicants. **If we read the evidence of first informant,** we may find that :--

- a. the first informant asked the accused why they have stopped him.
- b. the accused replied “as first informant is not allowing

their indisciplined activities in the parking department they will not allow him to proceed”.

c. First informant tried to give explanation for his approach in dealing with in-disciplined activities.,at that juncture, Applicant Ashwin dashed his bike from the backside of the first informant and he fell on the ground.

d. At that juncture, remaining three accused beat him.

At the end of the chief-examination, he gave that explanation that Applicant Ashwin also fell on the ground.

Considering the manner in which incident took place it requires close scrutiny.

Non-examination of other witness

32. It is important to note that except P.W.1 there are no other witnesses examined on behalf of the prosecution regarding actual happening of the incident. Though persons have gathered as told by P.W.1 no one is examined. It is a matter of record that the first informant called his office staff and two persons came in ambulance

and he was shifted to Vinoba Bhawe Hospital. It is pertinent to note that none of these witnesses were examined on behalf of the prosecution.

33. It is not universal rule that in every case the testimony of eye-witness need corroboration. When I have read the findings by the trial Court and the Appellate Court, **unfortunately there is no finding on this aspect about non-examination of the witnesses.** It is also true that trial Court and Appellate Court have emphasized more on sufficiency of the evidence of single eye-witness. It is also true that the trial Court in paragraph No.8 has supported its conclusion on the basis of observations in case of *State of Gujarat Vs. Bharwad* (supra) and the criteria laid down for appreciating evidence of injured witnesses. **There cannot be dispute about those principles but it depends upon facts and circumstances of each case.**

No immediate reporting to police

34. It is also true that the incident took place on 29th March 2007 at about 20.30 hours whereas it is reported to police station on 30th March 2007 at about 20.30 hours. **It means it is reported after almost**

24 hours from the incident. It can't be considered as delay but certainly FIR is not lodged immediately. Whether it can be considered delay in lodging FIR ? It is a matter of record that the first informant was not hospitalized after examination. It is matter of record that he filed complaint not in his individual capacity but as employee of the Company. So he was assisted by the Company staff and even he was admitted by Company staff only. Considering this situation so what prevented first informant from lodging complaint immediately after his examination at Vinoba Bhave Hospital? **But unfortunately there is no explanation coming forward from his side or from the side of the prosecution.**

35. So if evidence is appreciated from this perspective what **I find is that there is lack of corroboration to the sole testimony of P.W.1.** There is no explanation coming forward for lodging the FIR after 24 hours. Considering the versions put forth before the trial Court as narrated above, this Court feels that **examination of other witnesses was very much necessary.** When I have perused both the judgments none of them have dealt with these aspects. Ultimately, what is meant by appreciation of evidence. It is nothing but on which points the

evidence is adduced and it also includes certain aspects on which prosecution has not adduced.

36. In this case I conclude that the prosecution ought to have examined witnesses to corroborate the version of first informant. Considering the facts it was very much necessary and unfortunately both the Courts below have not dealt with this aspect. Trial Court had gone to the extent of putting burden on the accused to explain the injury. It cannot be. It is against the accepted principles of appreciation of evidence. Both the Courts below have only emphasized on the evidence of complainant and how it is sufficient to arrive at the conclusion of the guilt but both the Courts below have ignored the fact that evidence though available was not adduced on behalf of the prosecution. This is not the fault of the first informant but it is the fault of the prosecution. In view of the same, findings by both the Courts below cannot be sustained in the eyes of law.

37. This Court can certainly exercise the revisional jurisdiction to correct the mistake committed by both the Courts below. I have not come to this conclusion on the basis of evidence which was already adduced because it deals with the appreciation of evidence which is

generally not permissible in revisional jurisdiction. I have given findings on the basis of the evidence which could have been adduced but not adduced on behalf of the prosecution.

38. For the above discussion, I conclude that both the Courts below ought to have given benefit of doubt to all the Applicants. The judgment of conviction needs to be set aside. Hence, the following order:-

ORDER

- (i) Revision is allowed.
- (ii) The Judgment of conviction passed by the Court of Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa in SCC No.55 of 2008 and confirmed by the Court of Sessions Judge, Dadra and Nagar Haveli at Silvassa dated 31st January 2017 in Criminal Appeal No.1 of 2015 for the offences punishable under Sections 323, 341 r/w 34 of IPC are set aside.
- (iii) Applicant No.1- Shankar Chhana Vasava, Applicant No.2 - Ashwin Ramnaresh Sinh, Applicant No.3 - Chetan Makan Patel and Applicant No.4 - Avdesh

Sampat Yadav are acquitted.

- (iv) Fine amount paid, if any, be refunded.
- (v) Revision Application is disposed of.

[S. M. MODAK, J.]