

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 203 OF 2024  
WITH  
INTERIM APPLICATION NO. 1619 OF 2024

Prakash Bhagoji Gawade  
Age : about 47 Years, Occu. : Service,  
Pavangaon, Ramdas Patil Chawl,  
Thane – Belapur Road, Navi Mumbai. ...Applicant

vs.

State of Maharashtra  
Through Tilak Nagar Police Station,  
Mumbai. ...Respondent

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|-------------------------------------------------------------------------------|-----------------------------|
| Mr.Sarvesh Deshpande a/w<br>Mr.Prathamesh Deshpande and<br>Mr.Pratik Sabrad:- | Advocates for Applicant.    |
| Mr.H.J.Dedhia:-                                                               | APP for Respondent – State. |

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CORAM : S. M. MODAK, J.  
DATE : 6<sup>th</sup> MAY 2024

P. C. :-

1. Heard learned Advocate Shri.Sarvesh Deshpande for the Applicant and learned APP Shri.Dedhia for the Respondent – State.
2. Initially, there was a scuffle in between a taxi driver and probably with the present Applicant. It was at Amar Mahal Junction –

Ghatkopar on 19<sup>th</sup> October 2008 at about 19.30 hours. The reason is not known. There was a breakdown of BEST buses. That is why, there was a chaos. The First-Informant Baban Wagh is attached to the Traffic Department. He was posted there. He tried to control the traffic manual. His presence is doubted for want of producing supporting documents either muster or vehicle movement register. It was not accepted by both the Courts below and rightly so. The reason is, he was on uniform and it is but natural that he must be on the duty.

3. The said taxi driver came towards the First-Informant and told him that he is beaten by the Applicant. The said taxi driver is not examined. This was taken as a ground of objection. It was rejected by both the Courts below and rightly so, because, about the taxi driver, no one has noted his identity. The incident does not stop there. The First-Informant as a public servant tried to intervene and convince the taxi driver and the Applicant. The Applicant was not in a mood to listen. He was under influence of liquor, however, there was no charge of any offence. The Applicant instead attacked the First-Informant. Two buttons of the shirt were removed. There was a tenderness and scratches.

4. In the meantime, PW Nos.2, 3 and 4 arrived there. All of them took the Applicant to the Police Station and the FIR was registered. PW No.5 investigated and filed charge-sheet. There were in all 5 witnesses examined including the Medical Officer. He is PW No.6. She has noticed redness and tenderness and scratch on left chest and hand fingers. Learned Advocate Shri.Deshpande tried to argue about inconsistency in between the injuries stated by PW No.1 and this certificate. With his assistance, I have perused the deposition of all the witnesses. No doubt, PW No.2 has not heard the arguments in between the First-Informant and the Accused. He got knowledge about the assault from the PW No.1. Whereas, PW No.3 even though came on the spot, he has not witnessed the incident. He got the information from the First-Informant, Wagh. The evidence of PW No.4 is cryptic.

5. According to learned APP, there are two aspects. First, the presence of the Applicant at the spot and it is deposed by the witnesses and there is no explanation how he came at the spot. Second, the version given by the witnesses about the incident makes out a case under Section 353, 332 of Indian Penal Code, 1860 ("IPC") and

according to him, now, there is enhanced punishment and the forum of trial has also changed.

6. Learned Advocate Shri.Deshpande taken following grounds:-

- (a) The taxi driver is not examined.
- (b) The witnesses from the vicinity were not examined.
- (c) The inconsistency in between the evidence of PW No.1 and other witnesses.
- (d) The inconsistency in between the oral evidence and medical evidence.

7. It is true that the appreciation of evidence is not permissible in Revision. Whether there are lacunae in the investigation and whether there is absence of corroboration deals with appreciation of evidence, it is not permissible. The finding of guilt is not arrived at by considering improper evidence. It is neither arrived at by excluding a piece of evidence which is already there on record. Ultimately, the Court has to see even though there are certain lacunae in the investigation or conduct of the trial, whether it goes to the root of the matter. I do not think so. Even if spot panchanma is not there, it is not fatal to the Prosecution case. Nothing is recovered from the spot. The shirt of the First-Informant was seized, however, it was damaged in the muddemal

room and could not be produced. Breaking of buttons is not so material. Why not to believe the Police witnesses. Is there any grudge against the Applicant. He was found at the spot. He has not given any explanation. No doubt, if the private witnesses were examined, it could have supported the Prosecution case. The Court has to take a judicial notice of indifference by the members of the Society and spot is having heavy traffic. There was a breakdown of buses. No one stops there and everyone is in hurry. Who will come forward to give evidence. I could have disbelieved the Police witnesses if materials could have been brought during cross-examination. It is not there. So, I do not find any fault with the findings given by the trial Court. If hurt is caused to deter a public servant i.e. offence under Section 332 of IPC, whereas, if the public servant is assaulted from deterring him from discharging the duty that is an offence under Section 353 of IPC. The Applicant could have behaved in a descent manner. Instead, he has quarreled with the First-Informant who was in Police uniform i.e. sensing objectionable.

8. The trial Court has imposed maximum sentence of two (2) years for the offence under Section 353 of IPC. Whereas, for the offence under Section 332 of IPC, the sentence is two (2) years. There are no

criminal antecedents. I think, the sentence is harsh. He has already undergone the sentence of eight (8) months because he was taken into custody on 21<sup>st</sup> August 2023. Considering the facts and circumstances, I think, the sentence can be reduced for the period already undergone.

9. The amount of fine is already paid. The receipt is on Page No.29 of Interim Application. In view of that, following order is passed:-

### **ORDER**

- (i) Revision is partly allowed.
  - (ii) The conviction for the offence punishable under Sections 332, 353 of IPC by Metropolitan Magistrate, 72<sup>nd</sup> Court, Vikhroli, Mumbai vide judgment and order dated 1<sup>st</sup> November 2018 passed in C.C. No.1115/PW/2008 is maintained.
  - (iii) The sentence is reduced from the period of two years upto the period already undergone.
  - (iv) He be released from Jail, if not required in any other case.
10. In view of the above, Revision Application is disposed of.
11. Interim Application is also disposed of.

**[S. M. MODAK, J.]**