

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

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**INTERIM APPLICATION NO.2957 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.397 OF 2024**

Bhaskar Kashinath Malsane

Age: 41 Years, Occ.: Agriculturist,

Wo.: Nigdol, Tal. Dindori, Dist. Nashik

(Presently in Nashik Road Central Prison)

...Applicant

(Original Accused)

Versus

The State of Maharashtra

Through P.I. Dindori Police Station,

Dindori, Tal. Dindori, Dist. Nashik

...Respondent

Mr.Narayan Gopinath Rokade a/w Mr.Ajinkya Vilas Taskar, Mr.Udaysinh Deshmukh, Mr.Dhananjay Bhosale, Mr.Abhay Suryawanshi, Mr.Siddharth Panchmukh, Ms.Pratibha Pawar:-	Advocates for Applicant.
Mr.Ashok Gawai:-	APP for Respondent–State.

CORAM : S. M. MODAK, J.

DATED : 6th AUGUST 2024

P. C. :

1. Heard learned Advocate Shri.Narayan Rokade for the Applicant
and learned APP Shri.Ashok Gawai for Respondent – State.

2. This is an Application for suspension of sentence pending Revision. The Applicant is charge-sheeted for commission of offence under Sections 353, 323, 504, 506(2) of the Indian Penal Code, 1860¹. He was acquitted by the Court of Judicial Magistrate First Class – Dindori as per the judgment dated 10th November 2017 for the offence punishable under Section 353 of IPC. It was for the reason “*the day on which the PW No.1 examined him was a holiday*”. The trial Court observed, “*This cannot be a part of official duty, even though, he examined PW No.1*”. For rest of the offences, he was convicted. They are as follows:-

(a) For the offence under Section 352 of IPC:-

Punishment is Rigorous Imprisonment for one (1) month and fine of Rs.5000/- (Rupees Five Thousand Only).

(b) For Section 323 of IPC:-

Punishment is one (1) month and fine of Rs.1000/- (Rupees One Thousand Only).

(c) For the offence under Section 506 of IPC:-

The punishment is Rigorous Imprisonment of one (1) month and fine of Rs.5000/-.

(d) Compensation of Rs.10,000/- (Rupees Ten Thousand Only) is to be paid to the PW No.1.

¹ Henceforth, “the IPC”.

3. His Appeal was dismissed by the Court of Additional Sessions Judge – Nashik vide order dated 22nd July 2024. He was taken into custody.

4. In all, there were five (5) witnesses examined. They are:-

- (i) PW No.1 – **Harshal Kashinath Nehate** – Victim.
- (ii) PW No.2 – **Shivnath Babulal Nikam** – Spot Panch.
- (iii) PW No.3 – **Shahida Unus Shaikh** – Who was present in Primary Health Centre.
- (iv) PW No.4 – **Padma Aghankar** – Who was also present at the time of incident.
- (v) PW No.5 - **Dr.Kantilal Shankar Jagtap** – Who has examined PW No.1 after the incident.

5. The Investigating Officer is not examined. A copy of plea recorded in English and copy of statement recorded under Section 313 of the Code of Criminal Procedure, 1973² in English is tendered in the compilation. The trial Court has considered the evidence of three (3) witnesses viz., PW No.1, PW No.3 and PW No.4 and concluded that their testimony is reliable.

6. The incident took place on 7th November 2010 at about 1.30

² Hereinafter, “the Cr.P.C.”

p.m. Initially, one boy aged at 10-11 years went to the Primary Health Centre³ – Nigdol and told that the Accused has sent him to call the doctor for examining the blood pressure. The First-Informant i.e. PW No.1 informed that his father can come to the PHC. Thereafter, the Applicant went to the PHC. Again the same talks have taken place. However, PW No.1 refused to visit his house. Then, the Applicant got annoyed and abused the First-Informant. The First-Informant was beaten by fist and blows. PW No.3 and PW No.4 rescued the First-Informant. Then, complaint was lodged with Dindori Police Station.

7. There are certain improvements in the evidence of the witnesses. The trial Court observed “*the principle ‘FALSUS IN UNO FALSUS OMNIBUS’⁴ is not applicable*”. Those improvements pertain to the minor particulars. Even after excluding them, on remaining evidence, the trial Court found the evidence as reliable. My attention is invited to the answer given by PW No.1 during the course of cross-examination. 15 to 20 persons have gathered at the spot after he shouted. According to him, those witnesses were not examined. This point cannot be considered in the Revision. Even, they were not examined, the

³ “PHC”

⁴ False in one thing, false in everything.

evidence of PW No.3 and PW No.4 supports the case of the First-Informant.⁵

8. On 7th November 2010, there was a holiday due to Bhaubeej and Out Patient Department⁶ was closed. No patient was admitted at PHC – Nigdol. That is why, the trial Court observed, “PW No.1 was not performing the official duty”. It is endorsed by the Appellate Court in Para No.21. PW No.5 - Dr.Kantilal Shankar Jagtap has noticed contused lacerated wound above the wrist and tenderness and swelling. The Appellate Court found, no fault in appreciation of evidence. I do not think that the findings were recorded by wrongly considering the evidence and by overlooking the piece of evidence.

Non-compliance of Section 272 of Cr.P.C.

9. An additional ground is taken about non compliance of the provisions of Section 272 of Cr.P.C. It talks about language of the Court. As per the Notification issued by the State of Maharashtra dated 21st July 1998, the language of the criminal Court is declared as ‘Marathi’. Certain acts given in the schedule were excluded. According to learned Advocate Shri.Narayan Rokade, the plea was recorded in

⁵ Judgment dated 22nd July 2024 by Appellate Court

⁶ “OPD”

English and statement under Section 313 of the Code was also recorded in English and the Applicant does not know English.

10. He relied upon the following judgments:-

- (i) *Prashant P. Giri and others v/s. State of Maharashtra and others*⁷
- (ii) *Pratap Prakash Jadhav v/s. The State of Maharashtra and Anr.*⁸

11. On the point of important of statement under Section 313 of the Code, he relied upon the observations in case of *Nababuddin @ Mallu @ Abhimanyu v/s. State of Haryana*⁹. Whereas, according to learned APP, the earlier two judgments deal with the issue of language of examination for the purpose of Civil Judge Junior Division. According to him, those objections about not recording of plea in Marathi was neither taken before the Appellate Court nor in the memo of Revision and according to him, unless and until prejudice is caused, no findings can be set aside. He relied upon the observations in case of *Kulmeet Singh Virk v/s. The State of Maharashtra and Ors.*¹⁰

12. There cannot be any dispute about the language of the Courts,

⁷ 2010 SCC OnLine Bom 733

⁸ Writ Petition No.10021 of 2022 : 7th September 2022 : Bombay High Court

⁹ Criminal Appeal No.2333 of 2010 : 24th November 2023 : Supreme Court of India

¹⁰ Writ Petition (ST) No.4187 of 2017 : 2nd May 2017 : Bombay High Court

(except the High Court) being Marathi. It is also true that **Chapter VI of Criminal Manual** deals with “*general rules of inquiries and trial. Para No.18 says about recording of evidence in English in all the cases and proceedings*”. According to Mr.Rokade, there is an inconsistency in between this provision and the Notification issued dated 21st July 1998. It is true that as per the said Notification, certain acts are excluded and one of them is preparation of paper-book in Appeal and Revision.

13. In this case, copies of evidence are made available. All are recorded in English language. The Record and Proceeding is not available before this Court. It is also true from the trial Court judgment and from the Appellate Court judgment, one may not find that the objection was taken before both the Courts below. Even, present Revision memo does not contain it as a ground.

14. Being a question of law, it can be taken up during oral arguments also but it is not sufficient. He has to show, **whether as per the provisions of Section 464 of Cr.P.C., any prejudice is caused**. Any finding can be set aside if there is an error, omission or irregularity.

15. It is very well true that statement under Section 313 of the Code

and recording of plea are important functions in a criminal trial. The Accused must know what is the case, he has to face and what is the evidence against him. This principle is reiterated in the judgment of *Nababuddin* (cited supra). It is also true that the observation in Clause (viii) reproduced on Page No.8 in the said judgment, talks about delay in raising the contention. It is true that unless and until Accused will come to know about the allegations, he will not be in a position to defend the trial.

16. So, there are two factors:-

- (a) The stage at which an objection is taken and
- (b) whether there is a failure of justice.

Admittedly, in this case, this objection is taken at belated stage. When we talk about **failure of justice**, it means, failure occasioned in apprising the case to the Applicant. If this will not happen, Accused is lost of an opportunity. This is not permissible in law.

17. Learned APP pointed out to me the signature put by the Applicant on a plea as well as on the statement recorded under Section 313 of the Code. On its perusal, there is a reason to believe that he has signed in English. He was represented by the Advocate before both the

Courts below. If it is so, I do not find that there is a failure of justice.
So, I do not think, a case is made out for interference. Mr.Rokade has taken a valid ground but the conduct of his client comes in his way. So, I am unable to grant him relief.

About compensation

18. However, learned Magistrate has committed an error in imposing compensation of Rs.10,000/- (Rupees Ten Thousand Only). Because, there can be compensation as per two provisions. They are as follows:-

(a) Section 357(1) of the Code:-

It can be resorted while imposing the sentence of fine or fine is the part of the sentence. Then compensation can be paid from the fine amount.

(b) Section 357(3) of the Code:-

When there is a sentence of imprisonment and there is no fine imposed, then Court can impose compensation independently.

19. In this case, there is fine imposed as well as compensation. This is an illegality. When the Court is imposing fine, **there cannot be an independent compensation.** But, it should be from the fine amount only. I do not find, there are reasons given in the trial Court judgment as well as in the Appellate Court judgment, why there is compensation

awarded. It is also true that the First-Informant was not on an official duty as recorded by the trial Court. There is no challenge to this finding by the State before the Appellate Court or before this Court. So, merely because PW No.1 was beaten, compensation cannot be awarded. That order needs to be set aside. If it is paid to the First-Informant, it has to be recovered.

20. There is a prayer for grant him a benefit of Probation. I am not inclined. The substantive sentence has to run concurrently. Probation cannot be taken as a ground in Revision Application.

21. In view of the above, following order is passed:-

ORDER

- (i) Revision Application is partly allowed.
- (ii) The impugned order¹¹ imposing compensation of Rs.10,000/- (Rupees Ten Thousand Only) and confirmed by the Additional Sessions Judge – Nashik vide order dated 22nd July 2024 in Criminal Appeal No.231 of 2017 is set aside.
- (iii) The amount of compensation if deposited, be returned to the Applicant-Accused.
- (iv) If the amount is paid to the First-Informant – Dr.Harshal Kashinath Nehate, let the Court of JMFC – Dindori to

¹¹ Vide Clause No.(4) of Operative Part of the judgment dated 10th November 2017 passed by the JMFC – Dindori – Nashik passed in S.C.C. No.191 of 2011.

recover that amount from him and pay it to the Applicant.

- (v) The prayer for granting him a benefit of the Probation of Offenders Act, 1958 is not accepted.

22. In view of the above, **Interim Application as well as the Revision Application stand disposed of.**

[S. M. MODAK, J.]