

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

INTERIM APPLICATION NO. 2966 of 2024

in

CRIMINAL APPEAL NO. 79 of 2022

Sadanand Sakharam Tharwal ... Applicant/
Appellant

versus

The State of Maharashtra Respondent

Mr. Hrishikesh Mundargi i/b. Ms. Pravada Raut, Advocate for the
Applicant/Appellant.

Ms. Ranjana D. Humane, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st OCTOBER, 2024.

P.C. :

1. By this application, applicant is seeking suspension of conviction in Sessions Case No.458 of 2019 arising out of Crime No.167 of 2006.

2. The applicant along with other accused have been convicted by learned Sessions Judge under Section 353 of the Indian Penal Code, 1860 (for short "IPC") and sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.50,000/- each, in default of payment of fine, to suffer further rigorous imprisonment for 6 months. The applicant is sentenced under Section 332 of the IPC to suffer rigorous imprisonment for 2 years and to pay of Rs.50,000/-, in default of payment of fine, to suffer further rigorous imprisonment for 6 months. The applicant is held guilty for offence punishable under Section 504 read with 34 of the IPC.

3. It is prosecution case that PW1-Ravindra Wagh, first informant, was working as Deputy Commissioner with Kalyan Dombivali Municipal Corporation, Kalyan (for short "KDMC"). He was In-charge of the department of unauthorized construction. On 13th July 2006, campaign of raising unauthorized construction in Dombivali Sports Complex (DSC) at Dombivali (West) was carried out as per the order of this Court. On 14th July 2006, PW1-Ravindra Wagh was sitting in his cabin. At about 11.45 am, the applicant called him in his chamber and questioned about the campaign carried at DSC. PW1-Ravindra Wagh answered the questions of the applicant, however, the applicant was not satisfied with the reply. Hence, the applicant told PW1-Ravindra Wagh to stay in his office as he wanted to discuss the issue. It is alleged that at about 12.20 pm. applicant along with co-accused and 20 to 25 persons went into the cabin of PW1-Ravindra Wagh. Accused No.2 shouted "याला मारा मारा" and then abused PW1-Ravindra Wagh. Applicant gave punch on the chest of PW1-Ravindra Wagh. Whereas, accused No.2 -Tatyasaheb Mane and accused No.3-Sharad Gambhirrao slapped PW1-Ravindra Wagh and assaulted him by fist blows on back. On the report of PW1-Ravindra Wagh, a complaint was registered against the applicant and co-accused. After investigation, charge-sheet was filed against the applicant and co-accused. After trial, the applicant has been convicted as referred above.

4. It is contention of learned counsel for the applicant that the applicant wants to contest the election of member of Legislative Assembly from Dombivali and as per Section 8(3) of the Representation of the People Act, 1951, the applicant is barred from contesting the election unless the conviction is suspended. If the conviction is not suspended, the applicant would be held disqualified for contesting the election. Hence, requested to allow the application.

5. Learned APP strongly objected to allow the application on the ground that the applicant has been convicted under Section 353 of the IPC. The applicant had beaten the Deputy Commissioner of Municipal Corporation who was discharging his duty. Learned APP further submitted that none of the shop-owners objected for demolition of the encroached portion but applicant and co-accused without any reason assaulted the complainant. The allegations against the applicant are serious in nature. If such persons are allowed to represent people, wrong message would be sent across the society. Hence, requested to reject the application.

6. I have heard both learned counsel, perused the impugned judgment and order and depositions of witnesses produced on record.

7. To prove its case, prosecution has examined 5 witnesses. PW1-complainant has stated in his evidence that the applicant and other co-accused assaulted him. In cross-examination, he admitted that he has stated before the Court that the applicant punched on his cheek, but he

admitted that the applicant did not punch on his chest. He further admitted that in his complaint that it is not mentioned that the applicant punched on his cheek and he could not assign any reason for it. He further stated that he has not filed complaint on the same day and he has not given any reason for not filing the complaint on the same day. PW2- Sanjay Kumar Kumavat who was working as clerk with PW1-Ravindra Wagh, complainant, has turned hostile and he has not supported the prosecution case. PW3- who was the Field Officer of the Encroachment Department also did not support the prosecution case. PW4-Ganesh Chavan, who was the Security Guard of KDMC stated that there was scuffle between the complainant and the applicant and co-accused and he separated them. He supported the prosecution case. In cross-examination, he admitted that he took some time to go the cabin of the complainant. PW5-Gokul Pardeshi is the Investigating Officer. He stated that when he saw the first informant and he did not find any injury on his body.

8. Considering evidence on record, I am inclined to allow the application. The applicant wants to contest the Assembly Election. Surely, grant of stay to conviction is not, by way of right, or it is not a rule, but it has to be resorted in rarest of rare case and since the applicant has made out one such case, on appreciating the evidence placed on record before the Trial Court, the applicant is entitled for suspension of conviction imposed upon him.

9. In view of above, the application is allowed and the conviction imposed upon the applicant by judgment and order dated 10th December 2021 passed by learned Special Judge in Special Case No.458 of 2012 is suspended during the pendency and final disposal of the above criminal appeal.

10. The interim application stands disposed of.

11. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)