



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Revision Application No. 2 of 2023

Nilkamal Ishwardas Gajbhiye,
Age 42 years, Occupation – Nil,
R/o Anjangaon Tah. Mouda,
Distt. Nagpur.

... Applicant

- Versus -

State of Maharashtra,
Through Police Station Officer,
Mouda, Tah. Mouda,
Dist. Nagpur.

**... Non-Applicant/
Respondent**

Ms. R. D. Raskar, Advocate for the applicant
Ms. M. H. Deshmukh, APP for the State/non-applicant

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 15-12-2023

Date of pronouncing judgment : 02-01-2024

JUDGMENT

Rule. Rule made returnable forthwith.

2. The applicant – original accused has questioned the legality, correctness and propriety of the judgment and order dated 4-1-2023 passed by the Sessions Court, Nagpur in Criminal Appeal No. 281/2017. Learned Sessions Court has allowed the appeal partly. Resultantly, the order dated 27-9-2017 passed by learned Judicial Magistrate First Class,

Mouda, District Nagpur in Summary Criminal Case No. 295/2013 convicting the applicant under Section 506 of the Indian Penal Code (IPC) has been set aside, however, the order convicting the applicant for the offences punishable under Sections 323 and 294 of the IPC has been upheld. Learned Magistrate has imposed the sentence of rigorous imprisonment for three months each for both the offences as also to pay fine of Rs. 500/- each and in default to suffer simple imprisonment for fifteen days.

3. Thus, there is a concurrent finding of the Courts below as regards conviction of the applicant for the offences punishable under Sections 323 and 294 of the IPC.

4. The facts necessary to decide the revision are as under :

(i) The informant Shalini Gedam was Head Mistress of Pranag High School, Anjangaon where the applicant was working as Peon. Since the applicant had not done the work of cleaning properly, the informant had given him notice resulting into deduction in his salary. On 25-9-2013 at about 10.45 a.m., the informant had assigned the work to two peons and instructed the applicant to fetch water in the bucket from the hand-pump and to clean bathroom. The applicant abused her by saying “साली मादरचोद तु संचालका सोबत झोपते व तु वेश्या आहे तो संचालक म्हातारा आहे मी

जवान आहे तु माझ्याकडे ये” (you mother fucker, you sleep with director, you are a prostitute, the director is an old fellow, I am young, come with me). The applicant has then assaulted the informant by iron bucket and also threatened her of killing on the same day. Accordingly, the Head Mistress lodged report with Mouda Police Station which came to be registered as Crime No. 3049/2013 for the offences punishable under Sections 294, 323 and 506 of the IPC.

(ii) To bring home the guilt of the applicant, the prosecution has examined five witnesses, namely, P.W. 1 Sunil Dongre, an employee of the school. He is a panch witness and author of spot panchanama. P.W. 2 Shalini Gedam, is an informant. P.W. 3 Sau Kshama Dongre, who was working as helper in the school and is an eye witness. P.W. 4 Dr. Asim Inamdar, who has examined the informant and issued MLC. P.W. 5 Arun Wankhede is the Investigating Officer.

5. The first appellate Court noted that the evidence of first three witnesses clearly indicates that P.W. 2 Head Mistress had assigned the work of bathroom cleaning to the applicant, who instead of performing his duty, assaulted the Head Mistress causing injuries on her left knee, thigh, right shoulder and left hand. The incident has been reported immediately. P.W. 4 Doctor has examined the Head Mistress on the same day and found multiple injuries on her body. The Head

Mistress was having contusion on right scapular region, blunt trauma, injury on the left shoulder and on left thigh above left knee. She was having abrasion on left knee as also swelling and abrasion over the left forearm. The injury certificate is at Exhibit 16 and referral card is at Exhibit 17. The injuries were found to be simple. PW. 3 has narrated the same facts. The spot panchanama has been drawn in the presence of PW. 1. There is nothing in the cross-examination to disbelieve these witnesses.

6. It is worth to mention here that the informant – Head Mistress has earlier taken action against the applicant and, therefore, there is every reason to believe that he was annoyed by adverse action taken by the informant against him. With this background, if the evidence is looked into, the assault causing hurt to Head Mistress is clearly established in the testimony of PW. 2 and PW. 3, eye witness. The story is corroborated by the testimony of PW. 4 Doctor.

7. The first appellate Court has then noted that the bucket used while committing offence has been not seized by the Investigating Officer. The Court noted that the incident has been narrated by PW. 2 and PW. 3. The incident has been corroborated by PW. 1 and PW. 4. There is nothing to disbelieve these witnesses. Accordingly, the

appellate Court noted that non seizure of bucket is not fatal to the prosecution for the proof of offence under Section 323 of the IPC.

8. As regards offence under Section 294 of the IPC, the Courts below have noted that the incident has occurred in the school premises which admittedly is a public place. The abusive words and language used by the applicant has been narrated by P.W. 1, P.W. 2 and P.W. 3. The applicant has abused the Head Mistress by using abusive words like 'you mother fucker, you sleep with director and you are prostitute etc.'. The Courts below, therefore, were of the view that the ingredients of Section 294 of the IPC have been proved.

9. Learned counsel for the applicant has submitted that the Courts below have not considered omissions and improvements in respect of offence under Section 323 of IPC. P.W. 2 has deposed that the applicant has assaulted her with steel bucket on left leg, left hand and her back. However, in the evidence, she has stated that the applicant has assaulted her on left hand and after that she fell down. As against, P.W. 3 has stated before the police that the applicant assaulted the informant by bucket and by pulling her down assaulted her with fists and blows, whilst in her examination in chief, she has stated that the applicant assaulted her with a bucket and she sustained injuries on her head, hand, leg and knees.

10. These omissions, however, were not put to the notice of witnesses nor were those proved in the evidence of Investigating Officer. In the circumstances, there arises no question of the learned Magistrate or first appellate Court taking cognizance of so called omissions. The law does not recognize these as omissions.

11. Learned counsel for the applicant then submits that there is conflict between two groups of the management and therefore, the applicant has been falsely implicated in this case. However, in the evidence what has been brought on record is that there is a conflict in the management but there is absolutely nothing to remotely show why will the applicant be falsely implicated.

12. The fact remains that the three witnesses have testified against applicant, which evidence has been accepted by the Courts below. Learned counsel could not point out patent illegality committed by the Courts below to revisit the evidence. Further the evidence of witnesses is supported by Doctor's evidence. The injuries sustained by Head Mistress speaks volumes about the assault committed by the applicant. The defence of false implication is, therefore, ruled out.

13. Learned counsel for the applicant submits that the presence of eye witnesses was not disclosed by PW. 2 Head Mistress in the First

Information Report (FIR). This argument is contrary to well settled principle of law that the FIR is not an encyclopedia. That apart, P.W. 2 in her evidence has explained as to why did she not name them. She deposed that she was disturbed at that time and, therefore, did not give other details.

14. Learned counsel then submits that there is variance in the time of incident. In the FIR, the informant has stated that incident has occurred at 10.45 a.m. As against, P.W. 1 has stated that incident has occurred at 10.10 a.m. and P.W. 3 states that incident had occurred at 10.45 a.m. I have gone through the evidence. P.W. 1, in his evidence, has not disclosed the time of incident. P.W. 2 has stated that incident occurred at about 10.45 a.m. and P.W. 3 has stated that incident has occurred at about 11.45 a.m. Thus, P.W. 2 and P.W. 3 have stated that the incident has occurred at about 10.45/11.45 a.m. Both P.W. 2 and P.W. 3 have not specified exact time of incident and, therefore, no advantage can be taken by the applicant on such petty ground.

15. It is well settled that this Court, being revisional Court, cannot touch the factual aspects of the matter and re-appreciate the evidence unless it is shown/found that the Courts below failed to exercise the jurisdiction which they are supposed to or have committed a patent illegality. It is further well settled that the revisional Court

cannot substitute its opinion simply because another view is possible and unless there is patent illegality on the face of record which may lead to miscarriage of justice, the revisional Court will not exercise its diligence over the matter. Despite such having been the position of law, learned counsel for the applicant has argued the case as if she is arguing an appeal. Not only that, she has placed reliance upon various authorities, none of which deals with the scope of revisional Court, particularly when the findings of the Courts below is concurrent.

16. Learned counsel intended to read all the judgments but was not permitted, considering the fact that by way of filing judgments, the applicant intends to re-agitate the issue as if she is arguing the first appeal.

17. Nonetheless, I will deal with the judgments which will only certify that the applicant has made an attempt to put forth his case before the revisional Court if his case is being considered by the first appellate Court.

18. The first judgment is of the Hon'ble Supreme Court in the case of *Sunil Kundu and another Vs. State of Jharkhand [(2013) 4 SCC 422]*. The Supreme Court has held that lapses or irregularities in investigation can be ignored only if despite their existence, evidence on

record bears out case of prosecution, is of sterling quality and where lapses or irregularities do not go to root of matter and dislodge substratum of prosecution case. This judgment, to my mind, will only support the prosecution because the applicant failed to show that the lapse of investigating officer in not seizing the bucket could make any difference in the present case. The evidence of P.W. 2 and the eye witness P.W. 3 supported by Doctor's evidence was more than sufficient to bring home the guilt of applicant for the offences punishable under Section 323 of IPC.

19. Learned counsel for the applicant has then relied upon two judgments, one is of the Supreme Court in the case of ***Sujit Biswas Vs. State of Assam [(2013)12 SCC 406]*** and the other is of coordinate Bench of this Court in the case of ***Ashok B. Mhatre and others Vs. The State of Maharashtra [2020 ALL MR (Cri.) 649]*** on the point of requirement of proof beyond reasonable doubt. The Supreme Court has held that it is the duty of the Court to ensure that mere conjectures or suspicion do not take place of legal proof and there has to be clear, cogent and unimpeachable evidence to convict a person. So far as the judgment of coordinate Bench of this Court is concerned, the question was about proof of assault and rioting. The Court noticed that the prosecution witnesses indulged in improvements and embellishment to

their basic allegations as set out in the FIR. The Court found that there was no concrete evidence on the point of accused pelting stones at victim's group which resulted in injury nor was there any evidence of enmity between the parties and accordingly extended the benefit of doubt. In the present case, the evidence of prosecution witnesses is clear, cogent and unimpeachable. The evidence of Head Mistress coupled with the evidence of P.W. 3 eye witness read with Doctor's evidence is sufficient to bring home the guilt of applicant. Both P.W. 2 Head Mistress and P.W. 3 have given details of assault as also the obscene language used by the applicant against the Head Mistress in the school premises.

20. The next judgment is of Madras High Court in the case of *R. Chandrasekar Vs. Inspect of Police Salem and anr. [2003 Cri.L.J. 294]*. This judgment deals with the scope of Section 102 of the Code of Criminal Procedure, which is not even the subject matter of the present case and, therefore, no further comment is necessitated.

21. The applicant has then relied upon the judgment of coordinate Bench of this Court in the case of *Anil Purushottam Kumar Vs. State of Maharashtra and ors. in Criminal Revision No. 61/2020 dated 28-6-2022*. The facts before the Court were that the offence was registered under Section 324 of the IPC. The applicant therein has

allegedly assaulted the informant by way of rod which was not seized. The allegations were that the accused therein had caused voluntarily hurt by dangerous weapon. The Court noted that even in such cases, without seizure, the conviction can be based upon the testimony of witnesses, if found credible. The Court further noted that the prosecution must, however, explain by plausible reasons as to why the weapon was not seized. Such are not the facts in the present case. The applicant has been charge-sheeted and convicted for the offence punishable under Section 323 of the IPC which makes the offence punishable for voluntarily causing hurt. The hurt could be caused without a weapon as well. In the present case, the hurt has been caused by bucket. The Investigating officer, in his wisdom, did not find it necessary to seize the same. However, and as rightly noted by the Courts below, the lapse is not fatal. The evidence of PW. 2 and PW. 3 coupled with Doctor's evidence is writ large on the point of applicant causing voluntary hurt to PW. 2 Head Mistress.

22. Learned counsel for the applicant has then referred to the landmark judgment in the case of *Tahsildar Singh Vs. State of U.P [AIR 1959 SC 1012]* on the point of contradiction and omissions. This case could only be useful had the learned counsel pointed out any material contradiction and/or omission in the case. She could not point out one

and, therefore, mere by citing the landmark judgment, no benefit could be extended to the applicant.

23. Learned counsel has then relied upon the judgment in the case of *V. D. Jhingan Vs. State of U.P. [AIR 1966 SC 1762]*. The appellant therein was convicted for the offence under the provisions of the Prevention of Corruption Act. The Supreme Court noted the essentials to attract presumption under the Prevention of Corruption Act and the onus of the accused to prove defence. The Supreme Court noted that the burden of proof lying upon the accused under Section 4(1) of the Prevention of Corruption Act will be satisfied if he establishes his case by a preponderance of probability as is done by a party in civil proceedings. In the present case, the defence is that there was rivalry in the management group and, therefore, the applicant has been falsely implicated. However, except for the statement, there is nothing in the evidence to even imagine that the applicant has been falsely implicated in the case.

24. The next judgment is of Hon'ble Supreme Court in the case of *Padam Singh Vs. State of U.P. [AIR 2000 SC 361]*. The Supreme Court noted that the appeal before the High Court was placed before the third Judge in view of difference of opinion between two Judges of the High Court. The third Judge merely stated conclusion of two

Judges who differed from each other and then agreed with conclusion of one of the Judges instead of appreciating evidence independently. The Supreme Court noted that the third Judge failed to discharge his duty as appellate Court. This judgment has been relied upon to criticize the judgment of first appellate Court. According to the learned counsel for the applicant, the first appellate Court has given a cryptic reason to uphold the conviction of the applicant. I have gone through the judgment. The first appellate Court may not have assessed the evidence as has been done by the trial Court but has noted the germane of the testimony of the witnesses and thereafter recorded a finding that the ingredients of Section 506 of the IPC are not attracted but the ingredients of other two offences have been made out.

It will be relevant to mention here that the incident, in the present case, is a short incident where Head Mistress has been assaulted by bucket by the applicant/peon. The evidence of all the witnesses runs almost in a paragraph or two. That being so, there was no necessity for the appellate Court to put in text, each and every word narrated by the witnesses while narrating the incident. The judgment of the Supreme Court will therefore, be of no relevance. The facts before the Supreme Court were altogether different. The third Judge was expected to render an independent finding after re-appreciating evidence. He failed to do so. Such is not the case here.

25. The last judgment referred to is in the case of ***Krishnegowda and ors. Vs. State of Karnataka [(2017) 13 SCC 98]***. The Supreme Court noted that when contradictions in the evidence of prosecution witnesses proved to be fatal to the prosecution case, then those contradictions go to root of the matter and in such cases, accused gets benefit of doubt. As noted earlier, so called contradictions and omissions have been not even proved through the Investigating Officer and, therefore, it will not lie in the mouth of the applicant to even suggest that there are material contradictions and/or omissions in the prosecution case.

26. Thus, none of the judgments are of any help to the applicant.

27. As against, learned Additional Public Prosecutor has by relying upon a single judgment has covered the grounds raised by the applicant in questioning the verdict of the Courts below. The Supreme Court in the case of ***Sanjeev Kumar Gupta Vs. State of Uttar Pradesh [(2015) 11 SCC 69]*** while dealing with the murder trial has commented upon appreciation of evidence and sufficiency of proof of the incident. The Court noted that in the situation of post incident trauma and shock caused to the witness, deposition about every detail with accuracy, cannot be expected from him. On the point of lapse of investigation,

the Supreme Court noted that though the weapon was not recovered, the prosecution case has been proved by medical evidence corroborated by testimonies of prosecution witnesses. Accordingly, the conviction is maintained. In the present case as well, the evidence on the point of assault has been not only spelt out in the testimony of the injured P.W. 2 but also by the eye witness P.W. 3 which stood corroborated by Doctor P.W. 4. The lapse of Investigating Officer in not seizing bucket will, therefore, be of no significance.

28. The sum and substance of above discussion is that there is absolutely no merit in the case. The revision is dismissed.

29. The applicant shall surrender before the Judicial Magistrate First Class, Mouda, District Nagpur within fifteen days from today to undergo the sentence in terms of judgment dated 4-1-2023 passed by the Sessions Court, Nagpur in Criminal Appeal No. 281/2017, failing which the learned Magistrate shall take appropriate steps to arrest the applicant and thereafter refer him to the prison for undergoing sentence.

(Anil L. Pansare, J.)