



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

CRIMINAL REVISION [REVN] NO.266 OF 2023

Applicant : Suresh S/o Ashruji Gawande,
 Aged about 48 years, Occupation : Agriculturist,
 R/o. Wara Jahagir, Tah. Mangrulpir,
 District- Washim.

– Versus –

Non-Applicant : State of Maharashtra,
 through Police Station Officer,
 Police Station Asegaon,
 Tah. Mangrulpir, Distt. Washim.

 Mr. S.K. Wankhade, Advocate for the Applicant.
 Mr. A.V. Palshikar, A.P.P. for the Non -Applicant.

CORAM : **M.W. CHANDWANI, J.**
DATE : **8th FEBRUARY, 2024.**

ORAL JUDGEMENT :

Heard.

02] **Admit.**

03] By the present revision application, the applicant has challenged the judgment and order of conviction, dated 07/11/2009 passed by the learned Judicial Magistrate First Class, Court No.2, Mangrulpir, in R.C.C. No.7/2009 as well as the judgment and order, dated 12/12/2023 passed by the learned Additional Sessions Judge, Mangrulpir in Criminal Appeal

No.154/2013 dismissing the appeal.

04] The applicant was prosecuted for the offence punishable under Sections 354, 448 and 506 of the Indian Penal Code (I.P.C.) on the allegations that during night hours, between 01:00 a.m. and 01:30 a.m., the applicant entered the house of the informant/complainant, he pressed her breast and asked her for sexual intercourse. Upon her refusal, he threatened her not to reveal the incident to anybody, else he would murder her. Thereafter, he left the place. On the next day, the informant revealed the incident to her relatives as well as her husband. The matter was reported to the Police Station Asegaon and Crime No.32/2007 came to be registered.

After completion of investigation, charge-sheet came to be filed before the learned Judicial Magistrate First Class. The learned Magistrate, after recording the evidence of the witnesses, convicted the applicant vide impugned judgment and order dated 07/11/2009 for the offence punishable under Sections 354 and 448 of I.P.C. sentencing him to suffer rigorous imprisonment for four months and to pay fine of Rs.200/- for each count, in default, to suffer further rigorous imprisonment for one month with a direction that both the sentences to run concurrently. The applicant was acquitted for the offence punishable under Section 506(II) of I.P.C.

05] The matter was carried in appeal before the learned Additional Sessions Judge. After re-appreciating the evidence, the learned Sessions Judge vide judgment and order dated 12/12/2023 dismissed the appeal filed by the applicant, thereby confirming the order of conviction passed by the learned Magistrate.

06] It is contended on behalf of the learned Counsel for the applicant that the Courts below mis-appreciated the material placed on record. None of the ingredients of the offence under Sections 354 and 448 of I.P.C. are made out as well as the delay in lodging the F.I.R. has not been considered by the learned Magistrate as well as the learned Sessions Judge.

07] *Per contra*, the learned Additional Public Prosecutor for the State submits that there are concurrent findings of two Courts. The applicant failed to show any illegality in the orders impugned. He submits that the evidence cannot be re-appreciated in the revisional jurisdiction and, therefore, no case is made out for interference in the orders impugned. Hence, he sought rejection of the revision application.

08] With the able assistance of the learned Counsel for the applicant as well as the learned A.P.P. for the State, I have gone through the record and proceedings of the case. The learned Magistrate as well as the learned Sessions Judge found that the version of the complainant/victim is reliable

and, therefore, passed the orders impugned. So far as the submission of the learned Counsel for the applicant that no ingredients of the offence under Section 354 and 448 of I.P.C. are made out is concerned, perusal of the evidence of the complainant goes to show the specific version of the complainant that the applicant entered her house during night hours between 01:00 a.m. and 01:30 a.m. and pressed her breasts. Sections 354 and 448 of I.P.C. reads thus:

“Section 354 - Assault or criminal force to woman with intent to outrage her modesty -

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Classification of Offence -

Punishment - Imprisonment for 2 years, or fine, or both - Cognizable Bailable - Triable by any Magistrate - Non-compoundable.

Section 448. Punishment for house-trespass -

Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or which may extend to one thousand rupees, or with both.

Classification of Offence -

Punishment - Imprisonment for one year, or fine of 1,000 rupees, or both - Cognizable - Bailable - Triable by any Magistrate - Compoundable by the person in possession of the property trespassed upon.”

09] The evidence on record clearly establishes that the applicant used criminal force on the complainant with intent to outrage the modesty of the complainant. Thus, the evidence of the complainant speaks in volume about the acts done by the applicant, which clearly falls within the purview of Sections 354 and 448 of I.P.C. Therefore, I do not find any force in the argument of the learned Counsel for the applicant. No perversity or illegality is found in the impugned judgments and orders passed by the learned Magistrate and the learned Sessions Judge at this stage.

10] The learned Counsel for the applicant submitted that the applicant has no antecedents; it is his first crime and he has small kids, who are dependent on him. The learned Counsel for the applicant also submits that the applicant is behind the bars since 12/12/2023. Considering the facts and circumstances that the applicant is repenting his deeds and it was his first crime, the learned Counsel for the applicant prays that the sentence of imprisonment be reduced.

11] *Per contra*, the learned A.P.P. submits that the sentence awarded by the learned Magistrate and confirmed by the learned Sessions Judge vide impugned orders, is just and proper and, therefore, he sought rejection of the prayer for reduction of sentence.

12] Considering the facts that the applicant has no antecedents and is the only breadwinner of his family and the incident has occurred way back in 2007, in my view, the sentence, which the applicant has already undergone till date, would suffice the purpose. Hence, I proceed to pass the following order :

ORDER

- i. The application is partly allowed.
- ii. The order of conviction for the offence punishable under Sections 354 and 448 of I.P.C. passed by the Courts below, is maintained.
- iii. The sentence passed by the learned Magistrate is modified as under :
 - (a) The applicant is sentenced to suffer rigorous imprisonment for the period on both count, which he has already undergone.
 - (b) Rest of the order of the lower Court including the fine amount shall remain intact.
- iv. In the aforesaid terms, the criminal revision application is disposed of.

(M.W. CHANDWANI, J.)