



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

CRIMINAL APPLICATION (APPR) NO. 139 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 103 OF 2024

Gajanan Maroti Shirpurkar

Vs.

The State of Maharashtra, thr. P.S.O. P.S. Babhulgaon, Dist. Yavatmal

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. Abhishek A. Zade, Advocate for the Applicant.
 Ms. M.R. Kavimandan, APP for the Non-applicant/State.

CORAM : G. A. SANAP, J.

DATED : 21st AUGUST, 2024.

. Heard learned advocate for the applicant/accused and learned APP for the non-applicant/State. Perused the record and proceedings.

2. This is an application for suspension of sentence. The applicant/accused had preferred an appeal against his conviction and sentence awarded by the learned Judicial Magistrate First Class, Babhulgaon. The learned Sessions Judge, by his order dated 8th May, 2024, acquitted the applicant/accused for the offence punishable under Section 506 of the Indian Penal Code, 1860 (for short, "IPC"); however, maintained his conviction and sentence for the offences punishable under Sections 354-A and 452 of the IPC and sentenced him to suffer rigorous imprisonment for one year on both counts.

3. The learned Sessions Judge directed the accused to surrender before the trial Court. The record shows that the appellant/accused did not make any application for suspension of his sentence before the Sessions Court after dismissal of his appeal. The accused, therefore, surrendered before the Magistrate, Babhulgaon. The learned advocate for the accused, as directed by this Court, has placed on record a certified copy of the application made before the learned Magistrate for surrender and for suspension of sentence. As far as the surrender is concerned, there was no problem. But, the order passed by the learned Magistrate would show that, on the surrender of the accused, the learned Magistrate released him on bail so as to enable him to prefer an appeal against the order of the Sessions Judge and suspended the sentence till then. In my view, this order is not in accordance with the law. The learned Magistrate has failed to take into consideration the factual background of the matter.

4. It is to be noted that, on dismissal of the appeal, even the Sessions Court has no power to suspend the sentence. The learned Magistrate appears to have exceeded his jurisdiction. The learned Magistrate has committed patent illegality. It may reflect on the overall approach of the Magistrate. It is to be noted that the learned Magistrate was required to apply his mind to the factual position. The order passed by the learned Sessions Judge directing the applicant/accused to surrender was on account of the dismissal of his appeal. The learned Magistrate was duty-bound to execute the order of conviction and sentence. On the surrender of the accused, the learned Magistrate was required under law to take him into custody and

send him to prison for undergoing the sentence. The record shows that the learned Magistrate even did not call the say of the Prosecutor. In my view, this is a serious mistake committed by the learned Magistrate. In order to rectify such a mistake for the future, it is required to bring this order to the notice of the learned Magistrate through the Principal District and Sessions Judge, Yavatmal.

5. Be that as it may, the accused has deposited the fine amount. The grounds of challenge to the impugned judgment and order have been set out in the revision application. This application is required to be heard on merits. The substantive sentence is one year imprisonment on two counts. The sentences have been directed to run concurrently. The revision application may take its own time for final adjudication. In this view of the matter, it is just and proper to suspend his substantive sentence. Hence, the following order:

6. Accordingly, the application is **allowed**.

i] The substantive sentence, i.e., rigorous imprisonment for one year for the offences punishable under Sections 354-A and 452 of the IPC, awarded by the learned Judicial Magistrate First Class, Babhulgaon, Distt. Yavatmal in R.C.C. No.31/2027 and confirmed in appeal by the learned Sessions Judge, Yavatmal, shall remain suspended during the pendency of the revision application.

ii] Applicant/accused – Gajanan Maroti Shirpurkar be released on bail on his furnishing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the

like amount.

iii] The accused shall submit a fresh bail before the trial Court.

iv] The Registrar (Judicial) shall forward a copy of this order to the Principal District and Sessions Judge, Yavatmal, so as to enable him to bring it to the notice of the learned Magistrate.

7. The application stands disposed of accordingly.

(G. A. SANAP, J.)

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