



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 91 OF 2025

Sarang S/o. Balbhim Waghmare
Age : 42 years, Occu.: Service,
R/o. : Vikroli, Kannawar Nagar-2,
Vikroli East, Mumbai.

....Applicant

Versus

1. The State of Maharashtra
Through Dharashiv City Police Station,
Dharashiv, Dist.Dharashiv.

2. X. Y. Z.

....Respondents

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Advocate for Applicant : Mr. Sushant Baburao Choudhari
APP for Respondent no.1 : Mr.PP Dawalkar
Advocate for Respondent no.2 : Mr. Sudarshan J. Salunke

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 NOVEMBER, 2025

PRONOUNCED ON : 27 NOVEMBER, 2025

JUDGMENT :

1. In this revision, there is challenge to the Judgment and order dated 04-03-2025 passed by learned Sessions Judge, Osmanabad in Criminal Appeal No.3 of 2024, dismissing the appeal arising out of Judgment and order dated 18-01-2024 passed by learned Chief Judicial Magistrate, Osmanabad, in Regular Criminal Case No.460 of 2013 convicting revisionist for offence under Sections 498-A, 377, 354-A(1)(i)(iii) of the Indian Penal Code.

**FACTS IN NUTSHELL GIVING RISE TO PROSECUTION OF
REVISIONIST**

2. Revisionist was married to respondent no.2 herein on 26-02-2012 as per customs and rituals. They both proceeded to Shimla Manali for honeymoon and there, respondent no.2 claims that there used to be quarrel on petty counts and husband did not maintain natural sexual relations with her, but compelled her to have oral sex, made her masturbate him and had unnatural sexual intercourse. He also showed her porn videos and forced her to intimate in such manner. It was against her will and wish and by beating her. In the hope of change in behaviour and circumstances by advent of time, she did not report to anyone. However, when it became unbearable, she initially reported it to her mother, who in turn reported to her father, who further apprised and questioned the husband and in-laws. It is case of respondent no.2 wife that, for treatment of husband, her in-laws put up a demand of Rs.5,00,000/- and harassed her and therefore, she approached Police and lodged report.

Based on such report, crime bearing no.144 of 2013 was registered for offence under Sections 377, 498-A, 354-A(1)(i)(iii), 354-B, 109, 504, 506 read with 34 of the Indian Penal Code (IPC) and after conducting and concluding investigation, accused was

chargesheeted and made to face trial before learned Chief Judicial Magistrate, Osmanabad, who permitted leading evidence and on appreciating the same, recorded finding that offence under Sections 498-A, 377, 354-A(1)(i)(iii) of the IPC was made out and prosecution failed to establish other charges.

Feeling aggrieved by the above, present revisionist preferred Appeal No.03 of 2024 before learned Sessions Judge, Osmanabad, who too heard both sides, re-appreciated the evidence and by Judgment and order dated 04-03-2025, upholding the judgment of trial court, dismissed the appeal.

Hence, present revision.

SUBMISSIONS

On behalf of revisionist :

3. Before this court, learned counsel for revisionist would submit that allegations are false and fabricated. That, there was no medical examination of victim. That, reporting is delayed with an attempt to rope in entire family. That, baseless allegations are made. He submitted that, on same set of evidence, accused no.3 - mother-in-law was acquitted. According to him, entire judgment of trial court is on presumptions and there is no sound foundation or reasoning for

accepting the prosecution version. He criticized the judgment of trial Court for failing to consider that no specific dates are quoted and that, accusations of commission offence under Section 377 of the IPC are levelled against entire family that too with vindictive attitude. He pointed out that, only evidence of PW1 informant is appreciated by both learned Courts below and directly believed the same and hence, he seeks indulgence.

In support of his submissions, learned counsel placed reliance on the decision of High Court of Delhi in the case of *Sunny Kant v. The State NCT of Delhi* [MANU/DE/3539/2025] and the decision of High Court of Madhya Pradesh (Jabalpur Bench) in the case of *Umang Singhar v. State of Madhya Pradesh and Ors.*, [MANU/MP/3705/2023].

On behalf of respondent no.2 :

4. Learned counsel for respondent no.2 supports the impugned judgment and prays for rejection of the revision. He placed reliance on the decision of the Allahabad High Court in the case of *Imran @ Ashok Ratna v. State of U.P. and Another* dated 06-05-2025, and decision of High Court of Himachal Pradesh, Shimla in the case of *Rajesh Kumar and others v. State of H.P. and another*, dated

30-04-2025.

ANALYSIS OF EVIDENCE ON RECORD

5. In trial Court, case of prosecution was rested on evidence of four witnesses i.e. **PW1** informant, **PW2** her mother and **PW3** Medical Officer, who allegedly counseled and advised medical treatment to both husband and wife, and **PW4** Investigating Officer.

6. In trial Court, evidence of **PW1** informant is at exh.78, wherein she has reiterated all acts of her husband during their visit to Simla Manali as well as as even after returning home at Vikroli, Mumbai, it being against her will and wish, when it became unbearable, she reporting her mother. Thus, in her evidence, she has narrated the events took place while at Shimla Manali and Vikroli after returning home in March, 2012. She claims that, when she allegedly intimated parents of husband, it is her testimony that they in turn asked her to give Rs.5,00,000/- for medical treatment of accused husband and further told that if she narrates anything about said incident to anyone, she would face dire consequence. She also deposed about referring her husband to Doctor and attempt of medication. Thereafter, they both referred to **PW3** Medical Officer on 05-02-2013.

While under **cross-examination**, there are questions about she taking attempts for clearing MPSC. At one point, she has admitted that there were physical relations between him and accused after one year of marriage. She admits that after lodging report, her medical examination was not done and that she had not questioned manhood of her husband. She flatly denied that, as she was preparing for competitive exams, she herself never wanted to have children. She even admits that she has not lodged report at Shimla Manali, Vikroli or Barshi Police Station.

7. **PW2** mother of informant is also examined at exh.108 and she too in her testimony narrated about her daughter informing about the alleged pervert behaviour of her son-in-law towards her daughter and she informing about it to her in-laws and her in-laws demanding Rs.5,00,000/- for treatment of accused.

Though she is also **cross-examined**, nothing adverse has been brought therein.

8. The third witness on behalf of prosecution is **PW3** Medical Officer and he in his evidence has testified about both accused and PW1 informant visiting his hospital on 05-02-2013 for counseling.

He in examination-in-chief itself stated that accused husband had admitted unnatural sexual acts and he in turn giving him counseling about it to be not proper as there are chances of contracting infection. His evidence to that extent, has not been disturbed while undergoing cross-examination.

9. The substance of accusations are already reproduced in aforesaid paragraphs. Here considering the nature of allegations in the considered opinion of this court, evidence of PW1 informant alone is crucial followed by evidence of PW3 Medical Officer as PW2 mother seems to have hearsay information.

On re-analyzing evidence of PW1 informant, it is noticed that she has reported about alleged acts of accused husband and she has time and again laid stress that the same was without her wish and consent. She has narrated that she was forced, beaten to co-operate during physical intimacy and that at time fell sick and entertained ideas of committing suicide. She was made to watch porn videos and he asked her to do such acts while sex. Her such testimony itself shows that she did not approve such relations.

In offences of such nature, the Hon'ble Apex Court has categorically stated that, if there is no consent, then the occurrence

would attract criminality. In the case of ***Navtej Singh Johar v. Union of India, AIR 2016 SC 4231***, the Hon'ble Apex Court has observed in paragraph no.253 (xvii) as under :

“253. (xvii) Ergo, Section 377 IPC, so far as it penalizes any consensual sexual relationship between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) or lesbians (woman and a woman), cannot be regarded as constitutional. However, if anyone, by which we mean both a man and a woman, engages in any kind of sexual activity with an animal, the said aspect of Section 377 is constitutional and it shall remain a penal offence under Section 377 IPC. Any act of the description covered under Section 377 IPC done between two individuals without the consent of any one of them would invite penal liability under Section 377 IPC.”

10. Here as stated above PW1 informant has not only once but on 3-4 occasions, of which reference is made, has categorically stated that she was not consenting party and she was rather forced upon. Though she has been cross-examined, nothing adverse to the extent of alleged acts of accused is brought on record to accept the submission that false, fabricated and concocted version has been stated with vindictive attitude.

11. The another crucial witness in the considered opinion of this

court is **PW3** Medical Officer. It needs to be noted that he is an independent witness and he apparently has no reason to take side of informant. He has clearly stated that PW1 informant and accused had visited his clinic on 05-02-2013 and on hearing both of them, he has impressed upon present accused that it is unsafe to indulge in such acts as there is possibility of contracting infection. Testimony of this witness PW3 Medical Officer fortifies and lends credence to testimony of PW1 informant that accused has indulged in such acts. Moreover, accused himself has admitted before this witness that he used to indulge in such act. Therefore, now it does not lie in the mouth of accused that allegations are false.

12. Though learned counsel for revisionist and learned counsel for respondent has placed on record several rulings, there is no dispute regarding such settled legal position.

13. Here, both trial Court as well as First Appellate Court have concurred and both have reached to finding that alleged offence has been made out. Therefore, taking such concurrent findings into consideration, even this Court find no reason to disbelieve the case of prosecution.

However, in the light of peculiar facts and circumstances and in view of relations then existing between the parties, sentence of two years simple imprisonment awarded under Section 377 of the IPC by the learned trial Court and upheld by the learned First Appellate Court seems to be on higher side and so is required to be interfered with and the said sentence is required to be brought down to one year. Only to this extent, orders of the learned trial Court and learned First Appellate Court are interfered and modified. Hence, following order :

ORDER

(I) Criminal Revision Application is partly allowed.

(II) The Revisionist is hereby sentenced under Section 377 of Indian Penal Code to suffer simple imprisonment for **one year** instead of two years.

(III) Rest of the Judgment and order dated 18-01-2024 passed by the Chief Judicial Magistrate, Osmanabad in RCC No.460 of 2013, including the payment of fine and the sentence in default of the same, is hereby kept intact. The Judgment and order dated 04-03-2025 passed by the Sessions Judge, Osmanabad in Criminal Appeal No.03 of 2024 is also modified to the above extent only.

(ABHAY S. WAGHWASE)
JUDGE

Later on :

14. On pronouncement of this Judgment, learned counsel for revisionist submits that he intends to approach the Hon'ble Apex Court for suspension of present order and therefore, effect and operation of the present Judgment and order be stayed for six weeks.

15. Learned counsel for respondent no.2 objects for the same.

16. In view of above, to enable the revisionist to approach the Hon'ble Apex Court, effect and operation of the Judgment and order passed today is stayed for a period of six weeks from today.

(**ABHAY S. WAGHWASE**)
JUDGE