



(1)

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

CRIMINAL REVISION APPLICATION NO.113 OF 2023

Manohar s/o Vasudeo Lakshane,
Aged about 47 Years,
Occupation : Labour,
R/o. Plot No.644, Near Power House,
Nandanvan, Nagpur.

..... APPLICANT

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station, Kalamna, Nagpur.

.... NON-APPLICANT

Mr. Bhushan Dafle, Counsel for the Applicant.
Ms. Swati Kolhe, APP for the non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15.01.2025

ORAL JUDGMENT :

1. **Admit.**

2. Heard learned Counsel for the applicant and learned APP
for the non-applicant/State.

3. The applicant is assailing the Judgment dated
02.11.2017 rendered by the learned 2nd Additional Chief Judicial
Magistrate, Nagpur, whereby the applicant is convicted for the
offence punishable under Section 323 of the Indian Penal Code (for
short 'the IPC') and sentenced to undergo rigorous imprisonment for
three months and to pay fine of Rs.100/-, in default, to undergo
rigorous imprisonment for ten days. He is further convicted for the

(2)

offence punishable under Section 294 of the IPC and sentenced to suffer rigorous imprisonment for four months and to pay fine of Rs.100/-, in default to undergo rigorous imprisonment for ten days.

4. The applicant has challenged the said Judgment and conviction in Criminal Appeal No.324/2017 which is dismissed by the learned Additional Sessions Judge Court No.12, Nagpur vide Judgment dated 10.05.2023.

5. The accusation which is held proved is that the applicant has caused hurt to the injured complainant and also used obscene words which cause annoyance to the others.

6. The brief facts of the prosecution case are as under:

Informant Rakesh runs a Tea Stall, whereas at some distance ahead, hair cutting salon of accused Manohar is situated near Orange City Beer Bar. Accused used to drink tea at the Tea Stall of the informant on credit and he would make a payment collectively at once later on. They were talking with each other casually. The accused indebted Rs.4/- to the informant. On 25.12.2011 at around 8.30 a.m., the informant went to the salon of the accused for making a hair cutting at around 11.30 a.m. At the relevant time, the accused was engaged with one customer. The informant told him that he should make his hair cutting as he indebted him and if not then make its payment. On which the accused got angry and abused the informant uttering obscene

(3)

words 'Lawade, Saale, Madarchod'. He slashed on cheek of the informant with barber razor. The informant sustained a bleeding injury, hence he rushed to the Police Station and filed the FIR.

7. After completion of the investigation, the charge-sheet was filed against the accused. The trial Court thereafter conducted the trial and held the accused guilty for the offence punishable under Sections 323 and 294 of the IPC. The accused preferred an appeal against the same before the learned Additional Sessions Judge, Nagpur, which came to be dismissed. Hence, this revision.

8. Heard learned Counsel Mr. Dafle for the applicant who submitted that as far as the application of Section 294 of IPC is concerned, which is not attracted as mere abuses are not sufficient to attract Section 294 of IPC. He submitted that there must be a further proof to establish that it was to be annoyance of others. The test of the obscenity is whether the tendency of the matter charge as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. In support of his contention he placed reliance on **N.S. Madhanagopal and another Vs. K. Lalitha** reported in **2022 LiveLaw (SC) 844**. He submitted that as far as the offence under Section 323 of the IPC is concerned, the evidence adduced by the prosecution is inconsistent. The evidence of the complainant that he was assaulted by the razor blade and sustained the injury is not supported by the medical evidence. The cross-

(4)

examination of this witness shows that it suffers from the infirmity. Though the alleged incident has occurred in the hair cutting shop of the accused, no independent witness is examined by the prosecution to corroborate the version. The spot panchanama also nowhere shows any blood stains are found at the spot of incident. No blood stains are found on the razor blade also. Thus, the fact of assaulting the injured by means of the razor is not established by the prosecution. In support of his contention he placed reliance on the Judgment of the Division Bench in the case of **Raju @ Sudhakar s/o Dayaram Khapre vs. State of Maharashtra** wherein the Division Bench of this Court has considered this aspect and observed that as far as this aspect is concerned, it is noticed that Ravindra was not sent for medical examination. There is no medical certificate on record to corroborate that Ravindra was assaulted by the accused at about 2.30 p.m. Looking to the overall nature of the evidence, we are of the opinion that in the facts of the present case, conviction under Section 323 of IPC cannot be sustained.

9. Alternatively, he submitted that even accepting the evidence as it is, if the charge of assaulting the injured by fist and blows on the basis of the evidence accepted as proved then also the applicant has already undergone approximately one month and 15 days behind the bar and the said punishment would be sufficient for

(5)

the offence if it is accepted that the offence under Section 323 of IPC is proved. He submitted that pre-trial he was behind bar from 25.11.2011 to 26.12.2011 i.e. one month and after conviction he was behind bar from 10.05.2023 to 23.05.2023 i.e. also of 13 days and prays he be released on the punishment which he has already undergone. He submitted that though he stick up with the first submission that no offence is proved against the present applicant, but it is the alternative submission that if it is accepted that the offence under Section 323 of IPC is made out against him then he has already undergone the sufficient period of punishment and therefore, he be released on the punishment which he has already undergone.

10. Learned APP strongly opposed the said submission and submitted that the evidence of the complainant sufficiently shows the involvement of the present applicant in the alleged offence for a trifling reason i.e. for the amount of Rs.4/-, the alleged incident has taken place. The injured was assaulted by razor blade due to which, he has sustained the injuries. He was treated in the hospital. The evidence of the complainant is sufficient to inspire the confidence and therefore, the offence punishable under Section 294 of IPC as well as Section 323 of IPC is established by the prosecution. In view of that the application deserves to be rejected.

(6)

11. Having heard the learned Counsel for the applicant and learned APP for the State, perused the evidence on record. The evidence of the complainant reveals that his Tea Stall is located on the footpath near Orange City Beer Bar, Nagpur. He is acquainted with the accused as accused runs the barber shop and his shop is located in front of his shop. On 25.12.2011 he closed his shop around 11.30 a.m. and went to the shop of the accused and asked for money of his tea otherwise asked him to cut his hair instead of giving him a money, on that accused abused him in a very obscene language saying 'Lawade, Saale, Madarchod.' On his request not to abuse him, he assaulted him by means of 2 – 3 blows of fists and also assaulted him with the help of razor blade. Due to which, he has sustained the injuries on his left cheek thereafter, he approached to the Police Station and lodged report. His report is at Exh.10. His cross-examination shows that there was a friendly relationship between the accused and the informant. The cross-examination further shows that after closing his Tea Stall, he used to go to the shop of the accused. Some infirmities i.e. the omissions are brought on record during the cross-examination. The defence of the accused is denied by the informant that as he caught hold the collar of the accused and therefore, the alleged incident has taken place. To corroborate the version of the complainant PW - 2 is examined by the prosecution which shows that he was present at the time of incident and it was alleged that the accused took out

(7)

one razor blade and inflicted injury on the cheek of Raju. He was also acted as panch on the spot panchnama. His cross-examination talks about the location of the shops. He also admitted that there used to be very traffic on the road, however no independent witness is examined by the prosecution. His cross-examination further shows that initially, he thought there was a casual quarrel and therefore, he has not intervened in the said quarrel. Besides the evidence of these two witnesses, PW-4 is examined who is the Investigating Officer who narrated about the investigation carried out by him.

12. On going through the evidence, it reveals that the offence under Section 294 of IPC was added as there was an allegation that the accused has abused in a filthy language. As far as Section 294 of the IPC is concerned, which reads as under:

"Section 294. Obscene acts and songs.—Whoever, to the annoyance of others –

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

13. The aspect of the obscenity is settled by the Hon'ble Apex Court in the judgment of the **N.S. Madhanagopal and another** (referred supra) wherein the Hon'ble Apex Court held that "it is to be noted that the test of obscenity under Section 294(b) of

(8)

the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew was reported in **P.T. Chacko v. Nainan (1967 KLT 799)** explains as follows:

"The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at page 371. Laid down the test of 'obscenity' in these words:

"..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences" This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth v. U.S.A., 354 US 476 (1957), Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harlan observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts". I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under Section 294(b) IPC".

14. Thus, it is observed by the Hon'ble Apex Court that "to prove the offence under Section 294 IPC mere utterance of obscene words are not sufficient but there must be a further proof to

(9)

establish that it was to the annoyance of others. The test of obscenity under Section 294(b) is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.”

15. By applying these principles, it has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused attracts the obscenity. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words that they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is not made out.

(10)

16. Taking into consideration the evidence on record. Admittedly the evidence is absent as far as the annoyance of the other persons due to the word uttered by the accused is absent. Learned trial Court as well as the learned Sessions Court has not taken into consideration that mere abusive words or mere utterance of the abusive words is not sufficient to attract the offence under Section 294 of the IPC and therefore, the conviction under Section 294 of the IPC deserves to be quashed and set aside.

17. Now coming to the another aspect that it was alleged that the applicant has also assaulted the complainant by means of razor blade and caused him injury as well as assaulted him by fist and kick blows. As far as the Section 323 of the IPC is concerned which states that whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

18. The evidence of the complainant shows that he was not only assaulted by the fist and kick blows, but he was assaulted by the razor blade and caused the injury to him. As far as the cause of the bleeding injury is concerned, admittedly, no evidence is produced on record besides the evidence of the complainant, to show that the injured has sustained the injury. There is no medical

(11)

certificate on record to corroborate that the accused has assaulted the injured by the razor blade. As far as assault by the fist and kick blows is concerned, the evidence of the complainant adduced on record sufficiently shows that he was assaulted by the fist and kick blows. This is also corroborated by the evidence of PW-2. Though these witnesses are cross-examined, but I do not find any infirmity in the evidence of the PW-1 and PW-2 as far as the assault by the fist and kick blows are concerned. The medical certificate is not required to prove the assault by the kick and fist blows. Thus, considering the evidence on record as far as the assault by the fist blows is concerned, the evidence is consistent and therefore, the conviction under Section 323 of the IPC is legal and proper one.

19. As I have already observed that offence under Section 323 of the IPC is made against the accused, but it has to be seen under what circumstances the alleged incident has taken place. The accused has to pay Rs.4/- to the complainant and therefore, the complainant had been to the shop of the accused and asked him to pay Rs.4/- otherwise, do his hair cut. At the relevant time, the accused was busy with the other customer and therefore, accused got annoyed and allegedly gave a fist blow on the cheek of the injured and therefore, the alleged incident has taken place. Thus, considering the circumstance under which the alleged incident has taken place and the sentence imposed by the learned trial Court as

(12)

well as confirmed by the Sessions Court, if considered appears to be a harsh one. The applicant/accused had already undergone and sentenced as he was in custody for the period from at 25.11.2011 to 26.12.2011 pre-trial and post-trial he was behind bars from 10.05.2023 to 23.05.2023. Thus, approximately, he was behind bars for one and half months. Thus, he has undergone half of the punishment i.e. one month and 13 days. Considering the nature of the offence, it would be just and proper and would be in the interest of justice to release the accused by imposing the punishment which he has already undergone. In view of that, appeal deserves to be allowed partly. Accordingly, I proceed to pass following order:

ORDER

- (i) The revision application is partly allowed.
- (ii) The applicant/accused **Manohar s/o Vasudeo Lakshane** is acquitted for the offence punishable under Section 294 of the Indian Penal Code.
- (iii) The conviction imposed by the learned 2nd Additional Chief Judicial Magistrate, Nagpur, sentenced the accused to undergo rigorous imprisonment for three months and to pay fine of Rs.100/-, in default, to undergo rigorous imprisonment for ten days for the offence punishable under Section 323 of the Indian Penal Code is modified and he is sentenced to undergo the punishment which he has already undergone and to pay fine of Rs.100/- which he has already paid.

(13)

20. The revision application is disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.