



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

CRIMINAL REVISION APPLICATION NO.139 OF 2018

Mr. Ashish s/o Ramdas Nighot,
Aged about 30 Years,
Occ: Private Work,
R/o Near Agrasan Bhavan,
Murtizapur, Tah. Murtizapur,
Distt. Akola

...APPLICANT

VERSUS

State Of Maharashtra,
through Police Station Officer,
Police Station Murtizapur,
Tq. Murtizapur, District Akola

...NON-APPLICANT.

Mr. R.P Durge, Advocate for the applicant.
Ms S.V. Kolhe, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 17, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. The applicant is assailing the judgment passed by learned
Judicial Magistrate First Class, Murtizapur dated 06/12/2016 in Regular

Criminal Case No.161/2013 whereby the applicant is convicted of the offence punishable under Section 353 of IPC and sentenced to suffer Rigorous imprisonment for one year and to pay fine of Rs.1000/- in default of payment of fine Simple imprisonment for 15 days. He is further sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/- of the offence punishable under Section 332 of the IPC and rigorous imprisonment for one year and to pay fine of Rs.1000/- of the offence punishable under Section 506 of the IPC.

3. The applicant challenged the said judgment of conviction in Criminal Appeal No.188/2016 by which the Appellate Court has reduced the sentence by modifying the same and he is convicted under Section 332 and 353 of the IPC and sentenced to suffer rigorous imprisonment for one year under Section 353 and one year under Section 332 of the IPC.

4. Being aggrieved and dissatisfied with the same, the present revision application is preferred by the applicant.

5. Learned Counsel for the applicant submitted that in support of the prosecution case, prosecution has examined in all eight witnesses. As per the prosecution case, the incident occurred in the intervening

night of 09/04/2013 and 10/04/2013. As per the report of the first informant on 11/04/2013 that he resumed the duty as a Night Watchman towards the BAR room situated within the court premises. One Ashish Nighot was sitting in the BAR room obstructed the informant and asked him to leave the premises but the informant Rajesh Sarag told him that he has to close the BAR room. On that there was hot exchange of words and he restrained him from closing the BAR room and also threatened him and also gave a blow on his nose by the fist due to which he sustained the bleeding injury. On the basis of the said report, police have registered the crime against the present applicant under Section 353, 332, 323 and 506 of the IPC. During investigation the Investigating Officer has drawn the spot panchnama, recorded the relevant statement of the witnesses, seized the cloths of the accused as well as the cloths of the injured and after completion of the investigation, submitted charge-sheet against the accused.

6. Learned trial Court has framed the charge vide Exhibit 11. The accused pleaded not guilty and claimed to be tried.

7. In support of the prosecution case, prosecution has examined in all 8 witnesses namely PW-1 – Rajesh Krushnasa Sarag vide Exhibit 15, PW-2 – Sanjay Keshavrao Hote vide Exhibit 22, PW-3 –

Sharad Shyamkumar Mehare vide Exhibit 24, PW-4 – Pradeep Pralhadrao Patil vide Exhibit 25, PW – 5 – Rahul Rameshrao Mahalle vide Exhibit 26, PW – 6 – Nilesh Bhagwansingh Susatkar vide Exhibit 27, PW – 7 – Balkrushna Govindrao Pawar vide Exhibit 31 and PW – 8 Dr. Shrikrushna Dnyandeo Dakhore vide Exhibit 34.

8. Besides the oral evidence, prosecution placed reliance on the oral report Exhibit – 16, First Information Report Exhibit – 17, Spot panchnama Exhibit – 23, MLC Exhibit - 18 and Seizure panchnama Exhibit – 19.

9. All incriminating evidence is put to the accused in order to obtain his explanation by recording his statement under Section 313 of the Code of Criminal Procedure. The defence of the accused is of a total denial and of false implication.

10. After appreciation of the evidence, learned trial Court held the accused guilty and sentenced him as afore stated which is confirmed by the Sessions Judge, Akola vide judgement dated 04/07/2018. Being aggrieved with the same, present revision application is preferred by the applicant.

11. Learned Counsel for the applicant submitted that the entire evidence adduced by the prosecution is not sufficient to establish the charge against the present applicant to prove the offence under Section 353 and 332 of the IPC. The evidence of the complainant is not corroborated by the independent witness. The prosecution witnesses PW-4 Pradeep Patil and PW-5 Rahul Mahalle have not supported the prosecution case. PW-3 – Sharad Mehare and PW-6 Nilesh Susatkar also not supported the prosecution case. The evidence of the Medical Officer also shows that the injury sustained by the injured is simple in nature and he has also admitted that fracture of bone of the nose is possible by fist blows. He further admitted that this type of injuries are possible if any person slept and fallen down on hard surface. Thus, there is no corroboration from the expert opinion also as to the nature of the injuries is concerned. Alternatively, he prayed that being there are no criminal antecedents against the present applicant and one opportunity is to be granted to him to reform himself, therefore, he be released by giving the benefit of Section 4 of the Probation of the Offenders Act.

12. Learned APP strongly opposed the application and submitted that the evidence of the complainant himself is sufficient to prove the charge against the accused, which is corroborated by the medical evidence. One criminal case was lodged against the present

applicant, but he was acquitted from the said charges. She submitted that considering the involvement of the present applicant he is not entitled for any benefit under Section 4 of the Probation of Offenders Act. In view of that, the prayer for benefit under Section 4 deserves to be rejected. She submitted that being the revision application is devoid of merits, liable to be dismissed.

13. I have heard learned Counsel for both the sides. On perusal of the evidence admittedly, PW-3, PW-4, PW-5 and PW-6 who are the independent witnesses have not supported the prosecution case. The evidence of PW-1 injured Rajesh Krushnasa Sarag deposes that alleged incident has occurred during the night hours on the intervening night of 09/04/2013 and 10/04/2013. The alleged incident has taken place on 10/04/2023 at about 7:45 PM in the premises of the Court of Civil Judge, Senior Division, when the informant had been to attend his duties. The evidence shows that on that day, the informant was on night duty as a Watchman in Murtizapur Court as he was working as a Peon. He has witnessed that lights of the Bar room are on therefore, he went there and saw the present applicant sitting inside the bar room, therefore, he asked him to leave the bar room. On that there was a hot exchange of words between them and the present applicant gave a fist blows on his face due to which he sustained the injuries. Therefore, he

approached to the police station and lodged the report. As per his evidence, he has informed the said incident to his Superiors and at the relevant time, the Advocates were present in the bar room, who have witnessed the said incident. The cross-examination of this witness shows that he has not filed on record any documents to show that he was on a night duty on the day of incident. The fact that the lights of the bar room were on is not stated by him while lodging the report, and therefore, that omission is brought on record. Except this cross-examination, nothing incriminating is brought on record. The eye-witnesses who are Advocates, none of them have supported the prosecution case. Even PW-2 who acted as a Panch has also not supported the prosecution case. Only PW-8 who is the Medical Officer who narrated about the medical examination and stated that the injured has sustained the simple injury due to the fist blows. He has also admitted that said injury is possible if any person slept and fallen down on hard surface. On appreciation of the evidence, the accusation of the present accused is proved as the evidence of the complainant is supported by the medical evidence.

14. I have perused the material on record, and there is no reason to disagree with the finding recorded by the learned Judicial Magistrate First Class and confirmed by the Sessions Judge, Akola. It does not appear that the applicant was implicated falsely in the

alleged offence. His presence is specifically narrated by the PW-1 who has sustained the injuries and the same is corroborated by the medical evidence. Considering the facts that the evidence which is on record sufficiently proves the involvement of the present applicant in the alleged offence. Alternatively, the learned Counsel for the applicant prayed for the benefit of Section 4 of the Probation of Offenders Act, therefore, the report of the Probation Officer was called, and the report is submitted by the Probation Officer, Akola in favour of the present applicant. It is submitted by the Probation Officer that opportunity can be granted to the present applicant as there are no criminal antecedents against him, and his overall conduct is good, and therefore, he can be benefited by giving the benefit under Section 4 of the Probation of Offenders Act. Thus, considering the report and considering the fact that alleged incident has taken place in the year 2013, the applicant is having a family to support. As there are no criminal antecedents and his involvement is not revealed in criminal activities, therefore, he is entitled to have an opportunity to reform.

15. While maintaining the conviction i.e. the sentence of imprisonment and payment of fine requires to be set aside and instead the applicant can be released on probation bond. Therefore, the

application deserves to to be partly allowed. Accordingly, I proceed to pass following order:

- (i) The application is partly allowed.
- (ii) The applicant shall remain under the supervision of the concerned Probation Officer, District Akola for the next two years.
- (iii) The applicant shall enter into a bond to permanently reside within the territorial jurisdiction of the District Probation Officer, Akola and to furnish to the Probation Officer his Cell phone number and permanent address.
- (iv) The applicant shall further undertake not to involve himself in any criminal or other undesirable activities.

16. The application is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)