



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

CRIMINAL REVISION APPLICATION NO.121 OF 2017

Lakhan s/o Dindayal Chouhan
Aged about 40 years, Occupation – Labourer,
R/o Ward No.1, Kuhi,
Tah. Kuhi, District Nagpur

...APPLICANT

VERSUS

State of Maharashtra,
through P.S.O.
P.S. Kuhi, Tah. Kuhi,
District Nagpur

...NON-APPLICANT

Mr. A.K. Sorde, Advocate for the applicant.
Ms R.V. Sharma, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 14, 2025.

ORAL JUDGMENT :

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

2. The applicant is assailing the judgment dated 11/09/2014 passed by the Judicial Magistrate First Class, Kuhi in SCC No.380/2012 whereby the applicant is convicted for the offence punishable under Section 294 of IPC and sentenced to suffer rigorous imprisonment for

three months and to pay fine of Rs.1000/- in default S.I. for 15 days. He is further convicted of the offence punishable under Section 353 of IPC and sentenced to suffer R.I. for three months and to pay fine of Rs.500/- in default to suffer S.I. for 15 days. The applicant further convicted of the offence punishable under Section 186 of the IPC and sentenced to suffer R.I. for three months and to pay fine of Rs.500/- and in default to suffer S.I. for 15 days.

3. The applicant has challenged the judgment of conviction in Criminal Appeal No.217/2014 which is dismissed by the Additional Sessions Judge, Nagpur vide judgment dated 04/08/2017.

4. The facts which are necessary for deciding the revision are as under:

The complainant Sau. Madhuri Hirendra Lad was serving as a Gramsevak. On 07/09/2012 at about 11.10AM she was present in the office of B.D.O., Panchayat Samiti, Kuhi for her official work. When she was searching some record, accused came there and obstructed her in her official work. Accused was insisting for some information from her, at that time she was collecting the data and informed to the accused that she would provide the information subsequently, but the accused abused her in a filthy language as "Bhosadachode Rande" and lifted nameplate of B.D.O. and rushed towards the complainant to beat. So also, he threw

articles which were kept on the table and started abusing the complainant. At that time other officials were present there. On the basis of the said report, police have registered the crime against the present applicant.

5. After registration of the crime, necessary investigation was carried out and after completion of the investigation, the charge-sheet was submitted against the accused. The prosecution has examined in all 5 witnesses in support of the prosecution case. The thrust of the prosecution is on the evidence of PW-4 - Madhuri Hirendra Lad as well as PW-2 - Dhanraj Keshavrao Gode and PW-3 - Premanand Uddhavrao Kumbhare. As far as evidence of PW-1 is concerned who acted as a Panch he is the formal witness. On perusal of the evidence on record, it reveals that as far as the evidence of PW-2 is concerned which shows that at the relevant time he along with the complainant was in the chamber of BDO at the relevant time, present accused came, abused the complainant and lifted nameplate of B.D.O. and attempted to throw it towards the complainant. The evidence of PW-3 - Premanand Uddhavrao Kumbhare is also on the similar line. Both the witnesses are cross-examined and during cross-examination, it revealed that the applicant was insisting for some information and as the complainant stated that she would provide the information later on he got annoyed. The evidence of the complainant also shows that she was abused by the present applicant by

saying “Bhosadachode Rande”. She is also cross-examined. During her cross-examination also it reveals that the applicant was insisting for the information which was not provided, and therefore, the alleged incident has taken place. On appreciating the evidence, learned Magistrate has convicted the applicant of the offence punishable under Section 353 and 186 of the Indian Penal Code is concerned. As far as the offence punishable under Section 353 of the IPC is concerned, the ingredients of the offence shows that whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty and if anything is done or attempted to be done by such person in the lawful discharge of his duty the person said to have committed the offence punishable under Section 353 of IPC. Section 353 of the IPC is reproduced hereunder for the reference :

353. Assault or criminal force to deter public servant from discharge of his duty-

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6. On perusal of the evidence on record it reveals that the allegation against the present applicant is that he lifted the nameplate. As far as using criminal force on the complainant or any public officer whoever present there, none of the witness have stated that either present applicant has used any criminal force either on the complainant or any other public officer or public servant or there was an attempt either to throw the said article towards any other public servant or the complainant. The only allegation is that he has lifted the said nameplate. No further action was deposed by any of the witness. Thus, as far as the ingredients of Section 353 of IPC are concerned, are not attracted. Similarly, Section 186 of the IPC deals with obstructing public servant in discharge of public functions. Section 186 of IPC reproduced hereunder:

186. Obstructing public servant in discharge of public functions.—

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

7. Here the evidence of the witnesses is completely silent as to the act of the present applicant showing that he has either obstructed the complainant or any other public servant while discharging of his public functions. The allegations and the evidence on record shows that when the complainant and other employees were in the chamber of the BDO at

that time, present applicant entered into the chamber and was insisting the complainant to provide the information whereon she asked him to come later on and she will provide the same and being annoyed with the same, he has abused her. Thus, considering the nature of the allegation and the evidence which is adduced on record, there is absolutely no evidence to show that the applicant has made any attempt or any act obstructing the public servant while discharging her public functions, and therefore, Section 186 of IPC is also not attracted. Now, coming to the offence punishable under Section 294 of IPC is concerned, the evidence of PW-2 - Dhanraj Keshavrao Gode and PW-3 - Premanand Uddhavrao Kumbhare and PW-4 - Madhuri Hirendra Lad who is the complainant is consistent as to the words used by the present applicant while abusing her. It is submitted by the learned Counsel for the applicant that mere abuses are not sufficient to attract Section 294 of IPC. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of *N.S. Madhanagopal and anr. Vs. K. Lalitha [2022 SCC Online SC 2030]*.

8. Section 294(b) of the IPC talks about the obscene acts and the songs. Section 294 of IPC reads as under:

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.*

9. In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.

10. The concept of the obscenity is dealt by the Hon'ble Apex Court in the case of N.S. Madhanagopal and anr. Vs. K. Lalitha (supra) wherein Hon'ble Apex Court has observed that it is to be noted that the test of obscenity under Section 294(b) of 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. By relying on the judgment in the case of ***P.T. Chacko v. Nainan (1967 KLT 799)*** it is held that:

“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. Hick- lin, [L.R.] 3 Q.B. 360 at 371 it was 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 S. 294(b) IPC".

11. It is further observed by the Hon'ble Apex Court that 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. 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. It is specifically observed by the Hon'ble Apex Court that 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, they felt annoyed and in the absence of legal evidence to show that the words uttered by the applicant accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.

12. Applying this principles in the present case, admittedly, the evidence of PW-2, PW-3 and PW-4 shows that there was utterance of the abuse by the present applicant by mentioning "Bhosadachode Rande". But there is no evidence that due to the speaking of the said obscene words they felt annoyed. Thus, the evidence as to the ingredient that due to the utterance of the obscene words by the applicant, the witnesses and the complainant felt annoyed itself is absent in the present case.

13. The averment made in the complaint are not sufficient to constitute the offence under Section 294(a) or 294(b) of the IPC. In the

overall view of this case, I am of the view that no case is made out against the applicant herein as alleged by the complainant.

14. In the result, the impugned judgments passed by the Judicial Magistrate First Class, Kuhi in SCC No.380/2012 and Additional Sessions Judge, Nagpur in Criminal Appeal No.217/2014 convicting the applicant and sentencing him under Section 294, 353 and 186 of IPC are hereby quashed and set aside.

15. The revision succeeds and is accordingly allowed.

16. The applicant is acquitted from the charges punishable under Sections 353, 294 and 186 of the IPC.

17. The revision application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*