
(2006) 03 BOM CK 0057

In the Bombay High Court

Case No : Criminal Revision Application No. 371 of 1997

Bhagwat Ganpat Tayade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 354

Citation : (2006) CriLJ 2214 : (2006) 3 RCR(Criminal) 603

Hon'ble Judges : S.P. Kukday, J

Bench : Single Bench

Advocate : S.G. Shinde, for the Appellant; Ranjana Reddy, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—Petitioner challenges legality of the order dated 24-7-1995 passed by the learned Judicial Magistrate, First Class Jarnner, convicting him for offence punishable u/s 354 of the Indian Penal Code and sentencing him to suffer RI for three months and fine of Rs. 2000/- in default RI for 20 days and order dated 8-12-1997 passed by the learned Sessions Judge, Jalgaon, confirming the order of conviction and sentence passed by the learned Magistrate.

2. In nutshell, the relevant facts are that the petitioner was serving as a teacher in Zilla Parishad's Primary School at Village Batawad (BK) Tq. Jamner. It is alleged that petitioner was molesting young girls including the grand daughter of complainant Pandurang Dattatraya Joshi (PW1). In the beginning the complainant ignored the complaints. However, subsequently apart from his grand-daughter, other girls, namely, Nanda Misal (PW2), Yogita Joshi (PW3), Reeria Patel, Ranjana Kale, Jijabai Patil and Sangeeta Shinde made the same complaints. The complainant, therefore, approached the Police and lodged a complaint on 27-8-1989. On the basis of this FIR, offence was registered against the petitioner, statements of the girls their parents etc. were recorded. After completion of investigation, charge -sheet came to be filed against the petitioner

for offence punishable u/s 354 of IPC.

3. During the course of trial. Summary Criminal Case No. 397/1989, in all four witnesses were examined. After appreciating the evidence, learned Judicial Magistrate, First Class, Jamner convicted the petitioner by his order dated 24th July 1995 and sentenced him to suffer RI for three months and to pay a fine of Rs.2000/- in default, to suffer RI for 20 days.

4. Being aggrieved by this order of conviction, the petitioner preferred Criminal Appeal No. 38/1995 before the Sessions Judge, Jalgaon. The appeal came to be dismissed by order dated 8th December 1997. The petitioner is impugning these orders in the present Revision.

5. Learned Counsel for petitioner submitted that the findings recorded by both the lower Courts are perverse and, as such, deserve to be set aside. Learned Counsel, in all fairness, admitted that he is not assailing the judgments of the lower Courts on any other ground.

6. Learned Counsel has taken the Court through the evidence of witnesses. According to him, evidence of the girls is not reliable. At the relevant time, Petitioner was 46 years old and as such, could not have indulged in sexual abuse, that too in the presence of other students, in broad day light. Learned Counsel further submits that the evidence of Nanda (PW2) and Yogita (PW3) should not have been believed by the lower Courts. He has taken the Court through the evidence of these two girls. At the time of occurrence, PW 3 was about 10 years old and was in the III standard. At the time of examination she was 16 years old. Nanda has testified that petitioner used to call her and other girl students for reading the books and while doing so, he used to lift their skirts, pull down their undergarment and molest them by pressing their private parts as well as breasts. Similar evidence is given by Yogita (PW 3). She was in the third standard, however, the petitioner was appointed as a Examiner for their standard, thus, he was attending that class and was sexually abusing the girl students of that class also. Nothing has been brought out in the cross-examination to discredit the evidence of these two girls. In addition, there is evidence of Incharge Headmaster, Ganpati Wani (PW 4) who has confirmed that there were complaints against the petitioner from the parents of the girl students and that he has chastised the petitioner on 2-3 occasions. Despite this, the petitioner continued to molest the girl students. Learned Counsel has referred to the evidence of complainant (PW 1) Pandurang Joshi and has mentioned that the petitioner had filed RCC No. 78/1989 against the complainant and others for assaulting him. It is conceded that this assault is in respect of activities of the petitioner covered by this prosecution. PW 1 and others came to be acquitted in this case on 24th July 1995 by the learned Magistrate, Jamner. If all the facts on record are considered the contention that the case is filed against the petitioner as a counter-blast cannot be sustained. Be that, as it may; it can be seen that the evidence of witnesses is properly considered by the lower courts. No fault can be found with the appreciation of evidence of witnesses by the lower Courts.

Apart from contending that petitioner could not have indulged in such activities in presence of students, no other point is raised by learned Counsel in respect of appreciation of evidence. The findings recorded by the Courts below are substantiated by the evidence on record. The conclusions are reached after proper appreciation of evidence. Therefore, contention of learned Counsel for the petitioner that the concurrent findings of facts recorded by the lower Courts are perverse cannot be sustained.

7. In exercising revisional jurisdiction, this Court does not interfere with the concurrent findings of facts recorded by the Courts below unless it is shown that the findings are perverse or based on no evidence. Revisional Jurisdiction is exercised to ensure that there is no miscarriage of justice. In the present case, the findings recorded by the lower courts do not suffer from any infirmity or illegality. Therefore no case for interference is made out.

8. Lastly, learned Counsel for petitioner submits that on account of passage of time, leniency be shown to the petitioner. According to learned Counsel petitioner has now retired from service. However, on account of his conviction, he is not getting retiral benefits.

9. Per contra, prayer for leniency is opposed by the learned APP tooth and nail. She submitted that having regard to the nature of the offence, no leniency be shown. The submission regarding leniency were considered and repelled by the Appellate Court. The petitioner was a teacher. Imparting knowledge is a noble profession. The petitioner was in a position of loco parentis to his pupil. Instead of imparting knowledge, petitioner was indulging in molestation of young girls of tender age. If the conduct of the petitioner is considered, this is not a fit case for showing leniency. Since no Illegality, infirmity or perversity is found in the Judgments of the lower Courts Revision deserves to be dismissed.

10. In the result, Revision is dismissed. Petitioner shall surrender to ball before lower Court on or before 31st March, 2006 for serving remaining portion of the sentence. Rule is discharged.