
(2016) 10 BOM CK 0083

In the Bombay High Court

Case No : Criminal Revision Application No. 14 of 2004

Madhukar s/o Bhagurao Haral

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 332

Citation : (2017) 1 AIRBomRCri 119

Hon'ble Judges : N.W. Sambre, J.

Bench : Single Bench

Advocate : Mr. N.T. Bhagat, A.P.P, for the Respondent/State; Mr. B.S. Kudale, Advocate, for the Applicant

Final Decision : Disposed Off

Judgement

N.W. Sambre, J. (Oral) - Learned Judicial Magistrate, First Class, Jintur, vide order dated 11th October, 2002 passed in Regular Criminal Case No. 154 of 2000, convicted the present applicant for an offence punishable under Section 332 of the Indian Penal Code sentencing him to suffer rigorous imprisonment for three months and fine of Rs.500/-, in default to suffer simple imprisonment for three weeks, which was confirmed in an appeal preferred by the present applicant before learned Additional Sessions Judge, Parbhani being Criminal Appeal No. 55 of 2002, by dismissing the appeal on 7th January, 2004.

2. Complainant Milind, Gramsevak of village Kapadsingi, on 25th April, 2000 lodged the complaint that while carrying out the work of reassessment of tax in the village, present applicant-accused came to him and asked him to issue caste certificate of his family members. The complainant informed him that the same will be done after some time, as he is not in the custody of seal and stamp of the Grampanchayat. It is then alleged that present applicant, feeling aggrieved by such response, assaulted the complainant by slapping on cheek and also threatened him to disallow his work.

3. In view of the complaint, offence came to be registered punishable under Section 332 of the Indian Penal Code.

4. The charge came to be framed at Exhibit-9 and in support of prosecution case, the prosecution has examined in all four witnesses i.e. PW1 complainant at Exhibit-12, PW2 Vishnu at Exhibit-14, PW3 Laxmikant at Exhibit-15, PW4 Narhari, A.S.I. the Investigating Officer, at Exhibit-18. The complaint is at Exhibit-13, whereas panchnama of scene of offence is at Exhibit-16.

5. While questioning the legality and validity of the conviction, Mr. Kudale, learned Counsel for the applicant would strenuously urge that the eye witness to the incident namely Panjabrao Haral was intentionally not examined. Though it is reflected from the investigation papers that he separated quarrel between the complainant and the applicant. According to him, as it has been brought on record that the water supply in the village was not working properly, as a consequence, pitcher Morcha was taken out in the village, in which, the applicant has participated and therefore, the applicant is involved in the false crime. He would then urge that necessary ingredients of Section 332 of the Indian Penal Code are not satisfied, as the quarrel between the applicant and the complainant is not pertaining to discharge of official duty. He would then urge that assuming that the applicant is not entitled for any acquittal from this Court, still looking to the past conduct of the applicant that there is no conviction of the present applicant in any other crime, he had no clear intention to deter public servant from discharging his official duty, looking to his age, benefit of provisions of Section 360 of the Code of Criminal Procedure be extended to him.

6. Per Contra, learned A.P.P. opposes the prayer and submits that there is sufficient material on record to depict that the applicant is involved in the crime in question. He would invite my attention to the evidence of complainant and other witness namely Vishnu, who accompanied the complainant at the relevant time. According to him, the nature of the incident as has been narrated in the complaint at Exhibit-13 speaks in voluminous terms as to the intention of the applicant to commit crime in question. According to him, present revision be dismissed.

7. With the assistance of respective Counsel, I have perused the original record. PW4, the Investigating Officer, attached to Sengaon Police Station has reduced the complaint of the complainant in writing which is at Exhibit-13, panchnama of scene of offence was drawn by him in presence of panchas i.e. PW3 namely Laxmikant, who has not supported the prosecution case. However, the said panchnama of scene of offence was proved by the Investigating Officer, which is at Exhibit-16. He has noted that the present applicant has uttered words that the complainant is his servant and then caught hold collar of his shirt and gave slap to him while the complainant was discharging his official duty i.e. he was carrying out work of reassessment of tax. So far as his cross examination is concerned, nothing is elucidated in favour of the present applicant. The complainant PW1 Milind came to be examined at Exhibit-12. He has in clear

terms narrated that while carrying out the public duty of reassessment of tax in the village, present applicant approached him on 25th April, 2000 at about 900 a.m. and asked for issuance of caste certificate of his family members. When the present applicant tried to explain him that same be done at later point of time, present applicant caught hold of collar of his shirt and slapped him. It has come on record that he was discharging public duty and then he lodged complaint.

8. In his cross examination, it was brought on record that PW2 Vishnu is husband of Janabai, Sarpanch of said village. It is also brought on record that prior to the incident, pitcher procession was brought on the office of Grampanchayat by the present applicant along with other villagers. It is also brought on record in his cross examination that the incident was witnessed by four to five persons.

9. PW2 Vishu, husband of Sarpanch is examined at Exhibit-14, who has in clear terms supported the case of the prosecution. If the contents of complaint at Exhibit at Exhibit-13 are analysed in the light of ingredients of Section 332 of the Indian Penal Code, it is required to be noted that Section 332 of the Indian Penal Code contemplates two contingencies, first part of said Section provides that whoever voluntarily causes hurt to public servant in discharge of his duty as public servant or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by the persons in lawful discharge of his duty, as such public servant shall be liable for the punishment.

10. The incident as is narrated in the complaint at Exhibit-13 and cumulative effect of evidence of PW1 and PW2 prima facie takes this Court to only conclusion that provisions of Section 332 of the Indian Penal Code i.e. later part is very much attracted and ingredients thereon are satisfied.

11. Though learned Counsel for the applicant has relied upon the judgment of the Apex Court in the matter of D. Chattaiah and another v. State of A.P. reported in AIR 1978 SC 1441 so as to submit that the act of complainant cannot be covered within meaning of requirements of Section 332 of the Indian Penal Code and has placed reliance upon the observations made in Paragraph Nos. 5,6,7 thereof, which read thus :

"5. It will be seen that substantially, the charge as framed, was under the second part of Section 332 I.P.C. of which the intent to prevent or deter public servant from discharging his duties as such public servant is an essential ingredient.

6. Counsel for the appellants has taken us through the records including the copies of the statements of material witnesses. It is urged by him that no case under Section 332 I.P.C. was made out against the appellants. In this connection, he has drawn out attention to the F.I.R. which, according to him, does not contain any allegation that the assault on the informant was with intent to prevent or deter him from performing his duty as public servant, or that it was the consequence of or related to anything done by him in the discharge of his official duty. We find force in this contention.

7. In the F.I.R. it has not been alleged that the incident was the out come of anything connected with performance of the complainant's duty as public servant. There is not even an obliquitous allegation suggesting that he was assaulted with intent to prevent or deter him from doing his official duty. All that was alleged by him in the F.I.R. (Ex.P.5), was that while he was attending to despatch work in the office on 29-11-68 afternoon, the three accused (who work in the same office) approached and questioned him as to why he had abused them., On the informant's denial of the accusation, they beat him. In so assaulting the informant Nannapu Reddy used a stick and scissors."

12. The factual matrix which was foundation in the said judgment are altogether different than that of present case. In the case cited supra, it is required to be noted that the incident therein is of assault on typist who was public servant which was not arising out of discharge or part of public duty but it was in view of personal differences between the complainant and accused in that case.

13. If the factual matrix of this case is considered, the fact remains that the complainant while discharging his public duty of assessing tax in the village was assaulted by the present applicant, that too, in reference to discharge of another public duty. As such, in my opinion, Section 332 of the Indian Penal Code and ingredients thereof are very much attracted. As observed herein above, evidence of PW1 and PW2 in clear terms speak of offence committed by the applicant, which is proved beyond reasonable doubt. As such, there is no substance in the revision qua conviction ordered by both the Courts below. As such, conviction of the applicant is upheld.

14. So far as last contention of the applicant that he is more than age of 50 years and in intervening period, he is not convicted for any other crime and as such, he be extended benefit of Section 360 of the Code of Criminal Procedure is concerned, in my opinion, case to that effect is made out. As such, I propose to pass following order:

ORDER

(i) The conviction of the applicant is maintained. In stead of fine amount of Rs.500/- (Rs. Five hundred only), the applicant shall pay fine of Rs.3500/- (Rs. Three thousand five hundred only). Out of fine amount of Rs.3500/-, amount of Rs.3000/- (Rs. Three thousand only) be paid to the complainant towards compensation.

(ii) Upon deposit of the fine amount within period of three months from today, the above referred amount be diverted and be paid to the complainant.

(iii) The applicant shall execute the bond of good behaviour for a period of one year before concerned Probation Officer, within eight weeks from today.

(iv) In default on the part of present applicant, the Probation Officer will forward report so as to enable this Court to pass appropriate order against the applicant in regard to sentence to be suffered by him.

15. With the above observations, Criminal Revision Application stands disposed of.