
(2004) 07 BOM CK 0121

In the Bombay High Court

Case No : Criminal Rev. Application No. 19 of 2000

Rajendra Bhagwantrao Deshmukh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 385, 498A

Citation : (2004) 4 MhLj 1134

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : None, for the Appellant; Wandile, Assistant Public Prosecutor, for the Respondent

Judgement

A.P. Lavande, J.—When this matter was called out for hearing neither the applicant nor his counsel was present. Mr. M.S. Deshpande who had filed his Vakalatnama for the applicant, has filed an application dated 18-11-2003 seeking leave to withdraw his Vakalatnama for the applicant in the present matter. Mr. M.S. Deshpande also produced the copy of the notice with postal slip. Thereafter, Advocate Shri M.S. Deshpande has filed another application dated 5-7-2004 placing on record the telegram asking the applicant to contact him immediately. According to Mr. M.S. Deshpande the applicant met him and has given him original telegram which he has produced on record. Shri M.S. Deshpande in his application dated 5-7-2004 states that the original papers have been given to the applicant and he has been informed that the applicant would instruct Mr. K. G. Tiwari Advocate. However, Shri M. S. Deshpande is not present today. I am inclined to permit Mr. M. S. Deshpande to withdraw his Vakalatnama for the applicant in the present matter.

2. When the matter was called out today none appeared for the applicant. Mrs. Wandile, A.P.P. appears for the State. In view of the absence of the applicant I have no other option but to decide the matter on merits after going through the records of the case. I have perused the judgment of the Appellate Court passed

by the Second Additional Sessions Judge, Akola dismissing the Criminal Appeal No. 34/97 by Judgment and Order dated 10-1-2000 filed by the present applicant. The said appeal was preferred against the Judgment and Order dated 17-3-1997 passed by the Judicial Magistrate, First Class, Akola in Regular Criminal Case No. 184/96 convicting the applicant u/s 498A of Indian Penal Code and sentencing him to suffer six months simple imprisonment and fine of Rs. 200/- in default two months" simple imprisonment. The applicant who was charged along with two others for the offence under Sections 498A, 323 read with 34 of Indian Penal Code was convicted u/s 498A only and acquitted of the offence u/s 323 and the other two accused were acquitted of the offence for which they were charged. In Criminal Case No. 184/96 the prosecution examined five witnesses and after appreciation of the evidence the Judicial Magistrate First Class, Akola convicted and sentenced the applicant as aforesaid. The appeal preferred by the present applicant being Criminal Appeal No. 34/97 was dismissed by the learned Additional Sessions Judge, Akola. I have gone through the judgment and Orders passed by both the courts below. Perusal of the Judgment and Order passed by the trial Court discloses that after appreciating the evidence led by the prosecution, the Magistrate was convinced that the offence u/s 498A was made out against the present applicant and, therefore, the Magistrate convicted and sentenced the applicant as aforesaid.

3. A bare perusal of the appellate Judgment discloses that the Additional Sessions Judge has not exercised the appellate jurisdiction as required by law. In appeal from conviction by the accused from the judgment and order of conviction, it is necessary for the appellate Court to marshal the prosecution evidence and only thereafter come to a finding whether the offence has been proved against the accused or not. It is needless to mention that the appellate Court is the final court of facts and law and, therefore, heavy responsibility is cast on the Appellate Court to properly marshal and analysis the prosecution evidence and thereafter come to a finding whether the offence is made out or not. No doubt if the Appellate Court concurs with the findings given by the trial Court it may not be necessary for the Appellate Court to reproduce in detail the reasons for concurrence but the least that is expected of an Appellate Court is to marshal the prosecution evidence even in the absence of any arguments by the learned counsel for the appellant and thereafter come to the conclusion whether the appeal has to be allowed or not. In the present case, the grievance of the applicant in the Memo of Revision is that there is total non application of mind by the learned Appellate Court while maintaining the Judgment and order of conviction passed by the Court of the Judicial Magistrate, First Class, Akola. Perusal of the judgment and Order of the Appellate Court reveals that the Appellate Court has not discussed and marshalled the evidence of the witnesses who have been examined by the prosecution. Mere reference to the deposition of the witnesses is not sufficient while exercising the appellate jurisdiction in an appeal from conviction. Since this Revision Application is against the Judgment and Order of conviction passed by the two courts below, the jurisdiction of this

Court is limited and this Court can interfere only if the findings given by the Courts below are perverse. Since the Appellate Court has not discussed the evidence on record, I am of the opinion that the proper course would be to remand the matter to the Appellate Court with a direction to marshal and analysis the evidence led by the prosecution and thereafter come to a finding whether the offence u/s 498A is made out against the applicant or not. Mrs. Wandile for the State has submitted this is not a case in which this Court should interfere with the conviction recorded. I find myself unable to agree with this submission of Mrs. Wandile, A.P.P. for the State. Since it is the duty of the Revisional Court to find out whether the findings given by either by the appellate court or by the trial Court are perverse it is necessary for both the Courts below to appreciate the evidence after marshalling the same. In the absence of said exercise this Court is not in a position to exercise revisional jurisdiction and, therefore, I am left with no other course but to remand the matter to the Appellate Court to discuss in detail the evidence led by the prosecution and give appropriate finding as he deems fit.

4. In the result this Revision is partly allowed. The Judgment and Order dated 10-1-2000 passed in Criminal Appeal No. 34/97 by the Additional Sessions Judge, Akola is set aside. The matter is remanded to the Court of Additional Sessions Judge, Akola to dispose of the appeal on merits in the light of the observations made above. The bail bonds executed by the applicant are discharged. The applicant is directed to appear before the Court of Additional Sessions Judge, Akola on 18-8-2004 at 11 a.m. In the event, the applicant does not appear before the Additional Sessions Judge, Akola on 18-8-2004, the Additional Sessions Judge, Akola shall take appropriate steps to secure the presence of the applicant in terms of law. The learned Additional Sessions Judge, Akola shall after hearing the applicant herein and the prosecution shall decide the appeal on merits and the same shall be decided on or before 30th October, 2004.

Criminal Revision is accordingly disposed of.