

(2012) 12 BOM CK 0073

In the Bombay High Court

Case No : Criminal Revision Application No. 54 of 2010

Santuk @ Bappasaheb

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324
Probation of Offenders Act, 1958 — Section 5

Citation : (2013) ALLMR(Cri) 561 : (2013) 2 BomCR(Cri) 95

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : S.J. Salunke, for the Appellant; Y.M. Kshirsagar, Assistant Public Prosecutor for Respondent No. 1 and Mr. N.K. Kakade, for Respondents No. 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith and is heard by consent. Heard learned Advocates for the parties.

2. Respondents no. 2 to 5 were tried before Judicial Magistrate First Class at Selu for offences punishable under sections 147, 148, 149, 325, 323, 504 read with sec. 149 of the Indian Penal Code, in Regular Criminal Case No. 60 of 2004. It appears that the charge-sheet in respect of fifth accused, namely, Kalyan Bhagwan Kharat was submitted to the Juvenile Court.

3. At the conclusion of the trial, learned Magistrate convicted respondents no. 2 to 5 for offence punishable under sections 323 and 324 read with sec. 149 of the Indian Penal Code. The learned Magistrate acquitted the respondents no. 2 to 5 of the offence punishable u/s 504 read with sec. 149 of the Indian Penal Code. However, instead of sentencing the respondents no. 2 to 5, directed their release on furnishing a bond of good behavior of Rs. 1,000/- each with one surety for good behavior for a period of one year u/s 5 of the Probation of Offenders Act. The learned Magistrate further directed that in the event of any breach of bond of

good behavior, respondents no. 2 to 5 be called upon for hearing and to receive a sentence. The learned Magistrate further directed to pay Rs. 500/- each i.e. Rs. 2,000/- in total by way of compensation to the original complainant Santuk Kharat and injured Manik Kharat.

4. Aggrieved by the aforesaid judgment and order rendered by the learned Magistrate, the State preferred Criminal Appeal No. 73 of 2007 in the Sessions Court at Parbhani.

5. The learned Sessions Judge at Parbhani, partly allowed the appeal and modified the judgment of the learned Magistrate, as regards the point of compensation, as follows:-

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(v) The accused are directed to pay compensation of Rs. 2,000/-. The total compensation from accused no. 1 to 4 is Rs. 8,000/-. The compensation amount of Rs. 4,000/- be paid to complainant Santuk Kharat and Rs. 4,000/- to injured Manik Kharat.

6. Being aggrieved by the judgment and order rendered by the Sessions Court, the original complainant has preferred the instant Criminal Revision Application.

7. The revision petitioner has, inter alia, prayed that the respondents no. 2 to 5 be awarded substantive sentence for imprisonment, by setting aside the benefit extended to them under the provisions of Probation of Offenders Act.

8. Heard learned Advocates for both sides and perused the impugned judgment.

9. The point urged before this Court is summarised as follows:-

Whenever the sentence of imprisonment is ordered in that event alone the award of compensation is permissible. Since the accused have been given benefit of probation, sentence remains in abeyance and hence, award of compensation would not follow. Therefore, as necessary corollary of award of compensation, award of probation by the judgment and order under revision deserves to be interfered, and the sentence must follow and the probation ought not be awarded.

10. On considering the material on record and respective contentions, what is perceived is as follows:-

Learned Sessions Judge may have in his mind:-

(a) That it is a case fit for conviction and also found that substantive sentence would be too harsh and would not do justice.

(b) Rather justice would be done if probation is granted by deferring the sentence.

(c) That justice to victim by way of award of compensation was imperative and that this could be done even without ordering substantive sentence.

(d) Ordering award of probation and still ordering payment of amount by way of compensation are not mutually exclusive and an order for both these together could be legally passed.

(e) Therefore, learned Sessions Court has ordered payment of compensation.

11. Petitioner's submission that as a corollary of award of compensation, the substantive sentence must follow, is fallacious. It is de hors the concept of compensation to victim as an effort to undo little of the injustice caused to the victims.

12. Petitioner's attempt and exercise to pursue for a substantive sentence, amounts to ask for the "debt as well as for pound of flesh".

13. A judgment which results in doing justice between the parties should be welcomed, than criticizing it barely on technicalities of law.

14. This Court is, therefore, satisfied that it is not a fit case for interference in revisional jurisdiction. Revision Application is dismissed and Rule is discharged.