
(2011) 03 BOM CK 0231

In the Bombay High Court

Case No : Criminal Revision Application No. 168 of 2007

Sunil Chavan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 186, 21, 323, 332, 353

Citation : (2012) BomCR(Cri) 542

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

Bench : Single Bench

Advocate : J.B. Kasat, for the Appellant; C.N. Adgokar, APP, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale , J.—By this Revision, the applicant has challenged the validity, legality, propriety and correctness of the impugned judgment and order dated 4.7.2007 passed by learned Additional Sessions Judge, Darvah District Yavatmal in Criminal Appeal No. 3/2004 (old No. 15/1997) whereby the conviction of the revision applicant for offence punishable u/s 332 of the Indian Penal Code (in short "IPC") awarded by the trial Court , was confirmed.

2. Briefly stated, it is the prosecution case that first informant one Shri Gahankari informed Jawala outpost of Arni Police Station that while he was working as Invigilator in Gurudeo Vidya Mandir, Jawala in Room No. 4A of the School for written examination in the subject of History of XII standard held during the period between 3.00 and 6.00 p.m., the accused Sunil Chavan who was appearing in the said examination, was caught with chits, papers and guide. While the Invigilator was trying to take the same from the accused, the accused gave fist blow on the nose of the Invigilator. In the result spectacle worn by the invigilator fell down on the ground and bleeding from the nose of the Invigilator followed. It is further alleged that accused had also assaulted the Invigilator on his chest. Thus, after the incident was reported, head Constable Pathan investigated into the crime, referred the Invigilator for medical examination,

recorded statements of witnesses concerned and upon completion of the investigation, the accused was charge sheeted before the Judicial Magistrate, First Class, Digras. The accused was charged with accusations punishable under Sections 332, 353 and 186 of the IPC. He pleaded not guilty and claimed to be tried. The prosecution led as many as five witnesses in order to prove that the accused had caused hurt to Invigilator. It is also prosecution case that said first informant Shri Gahankari was a "public servant" and discharging his duty as such. The case of the prosecution was sought to be defended on the ground that the scuffle had taken place between Shri Gahankari and the accused and that there was no evidence of alleged possession of papers or guide for copying. It is also pleaded in defence that at the relevant time, the first informant Shri Gahankari was not a public servant within the meaning of Section 21 of the IPC but was wrongly convicted u/s 332 of the IPC by the Courts below.

3. Mr C N Adgokar, learned APP submitted that first informant Shri Gahankari was a Invigilator/teacher working in Zilla Parishad High School, Loni and working as Invigilator at the relevant point of time. Therefore, he is a public servant within the meaning of Section 21 Clause twelfthly as according to learned APP, he was in the service or pay of the government or remunerated by the fees or the commission for the performance of public duty by the Government. However, it could not be disputed before me that the remuneration of Invigilator was paid by Maharashtra State Board of Secondary and Higher Secondary Education and not by the Government.

4. Learned Advocate for the revision applicant submitted that there was no evidence whatsoever to prove the prosecution case that first informant was acting as a "public servant" at the relevant time and was paid by the Government as such. Therefore, it is contended that the first informant Shri Gahankari could not have been considered within the scope of definition of the term "public servant " as defined in Section 21 of the IPC, more so when evidence of the prosecution is stone silent on this point.

5. It is true that Section 21 of the IPC contains number of clauses Nos. (2) to (12) which includes every Commissioned Officer in the Military (Naval or Air) Forces; every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; every Officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer nay oath, or to interpret or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any such duties ; etc. The learned Advocate for the revision applicant submitted that in the State of Rajasthan, the additional 13th clause was introduced which included every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law. The expression

"Public body" includes (1) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government ; and (b) a local authority. Admittedly, there is no such amendment by the State of Maharashtra introducing an additional clause in Section 21 of the IPC and therefore, the Invigilator Shri Gahankari could not have been considered falling within the scope of Section 21 of the IPC, as public servant or deemed public servant..

6. Learned APP could not point out any such amendment as was introduced in the State of Rajasthan to maintain that first informant could fall within the scope of Section 21 of the IPC. Looking into the definition of the term public servant and considering submissions advanced on behalf of the revision applicant ,it appears that the learned trial Magistrate as well as the Appellate Judge grievously erred in bringing the first informant Shri Gahankari within the province of Section 21 of the IPC in the absence of any State amendment in Maharashtra to Section 21 of the IPC as was introduced in the State of Rajasthan so as to consider the Invigilator at the examination held by the Higher Secondary Board XII standard as "Public servant" or "deemed public servant". For this reason, the conviction of the revision applicant for offence punishable u/s 332 of the IPC was bad in law and is not sustainable as Section 332 IPC required the prosecution to establish a basic fact that Invigilator Shri Gahankari (first informant in this case) was a public servant acting in the discharge of his duty as a public servant, while hurt was caused to him by the accused. That being so, the revision applicant could not have been convicted for offence punishable u/s 332 of the IPC. However looking to the evidence led by the prosecution, the prosecution had succeeded in establishing that the accused had given a fist blow on the nose of the Invigilator which resulted into bleeding from his nose while he fell down and the accused had also assaulted the Invigilator on his chest. The Medical Officer had examined the first informant when he was referred for medical examination. The Medical officer had also issued a medical certificate. The prosecution had examined eye witness to the incident in the form of Shri Bhaskar Panse (eye witness to the incident) who was also working as another Invigilator in the same room. Apart from the evidence of first informant which was direct in respect of the accused causing voluntary hurt to the first informant, the Medical Officer Dr. Rathod who was also examined as PW 4 and conductor of the examination Shri Gugane the Investigating Officer Shri Pathan (PW 5) deposed about the investigation done into the case. Thus, there was sufficient evidence beyond reasonable doubt that the accused had voluntarily caused hurt to the first informant Shri Gahankari which amounts to an offence punishable u/s 323 of the IPC punishable to the extent of imprisonment of one year and fine in the sum of Rs. 1000/or with both.

7. Learned Advocate for the applicant contended that the learned trial Magistrate or the Appellate Court ought to have given benefit of Section 360 of the Code of Criminal Procedure to the accused in the facts and circumstances. It is contended that at the relevant time, the accused was a student of aged about 20 years;

now he is a businessman, aged about 33 years. Learned Advocate for the revision applicant made a reference to the ruling in Hari Vallabha and Anr. v. State of M.P. (2005) 10 SCC 330. In that case, the Apex Court had allowed the appeal in part upholding conviction but directed the trial Court to deal with the accused under provisions of Section 360 Code of Criminal Procedure after considering that the accused in that case was the first offender and should have been dealt with u/s 360 Code of Criminal Procedure. It is also the grievance of the learned Advocate for the revision applicant that special reasons for not giving such benefit u/s 360 Code of Criminal Procedure were not recorded in clear terms by the Courts below. The learned Addl. Sessions Judge as well as trial Magistrate had not considered the implication of Section 360 Code of Criminal Procedure probably because the conviction was for a serious offence punishable u/s 332 of the IPC. Be that as it may, since the conviction u/s 332 of IPC is held unsustainable and it is converted into conviction for offence punishable u/s 323 IPC, it is necessary to direct the learned trial Magistrate concerned to deal with the accused under the provisions of Section 360 Code of Criminal Procedure.

8. In the result, therefore, the Revision application is partly allowed. The conviction and sentence for offence punishable u/s 332 of the learned Addl. Sessions Judge by the impugned judgment is set aside and instead, the accused is convicted for offence punishable u/s 323 of the IPC. The learned trial Magistrate shall hear the accused /convict under the provisions of Section 360 Cr.P.C, and pass an appropriate order according to law. The revision applicant shall appear before the learned JMFC, Digra on 3rd May 2011 at 11.00 a.m. Since the applicant is on bail he is discharged from the liability of furnishing bail bond. The appeal is allowed in the manner indicated hereinabove.