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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.245 OF 2018

Suresh Ambarnath Londhe

....APPLICANT

VERSUS

1. The State of Maharashtra
2. Bhaskar Nimba Amrutsagar

....RESPONDENTS

.....

Mr P. S. Paranjape, Advocate for Applicant

Mr M. A. Aher, APP for Respondent No.1/State

Mr S. S. Patil, Advocate h/f Ms Nima R. Suryawanshi, Advocate for
Respondent No.2

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 21st AUGUST, 2026

PRONOUNCED ON : 07th OCTOBER, 2026

ORDER:-

1. The applicant is challenging the judgment and order dated 13/07/2018, passed by the learned Additional Sessions Judge, Dhule in Criminal Appeal No.41/2015, whereby the judgment and order dated 24/04/2015, passed by the learned Judicial Magistrate First Class (JMFC), Court No. 5, Dhule in S.T.C. No.760/2011 came to be confirmed and the order of conviction and sentence of the applicant/accused for the offence punishable under section 500 of Indian Penal Code (IPC) came to be maintained.

(2)

2. Respondent No.2 is the complainant, who had filed S.T.C. No. 760/2011 before the JMFC, Dhule. As per the complainant, he and his wife established a society under the name of Dr. Babasaheb Ambedkar Rural Development Foundation. The purpose of the society was to provide education, health and to work for other social causes, such as plantation of trees etc. On 20/02/2010 and 21/02/2010, the complainant and his wife had organized an international Buddhist conference. The applicant/accused was elected as the Chief Coordinator for the arrangement of the said conference. However, there started dispute between the applicant/accused and respondent No.2/complainant. It is the allegation of the respondent No.2/complainant that the applicant/accused started defaming him by saying that respondent No.2/complainant was trying to deceive the people. The applicant/accused was the District Level President of the Buddhist Society of India. After the conference took place, the accused started sending letters to various authorities, stating therein that respondent No.2/complainant had committed fraud to the tune of Rs. Twenty Five Crores Seventy Five lakhs. Such letters were issued to Chief Executive Officer Zilla Parishad, Education Officer, Collector, Police Inspector of City Police Station and others. From 10/02/2011, the applicant/accused allegedly started defaming respondent

(3)

No.2/complainant by putting a tent on the public way of the entrance of Zilla Parishad. He had put boards stating that the complainant and his wife had committed fraud of rupees 25.75 crores. He also defamed respondent/complainant by distributing pamphlets to the people and spreading the news in newspapers, TV channels etc. According to respondent No.2, such action on the part of the applicant/accused resulted in defamation, and therefore, he and his wife suffered immense mental trauma for the same. On 15/3/2010, respondent No.2/complainant sent a notice to the accused through his Advocate. The accused had duly replied to the said notice. Thereafter, respondent No.2/complainant had filed complaint before the learned Judicial Magistrate First Class. After hearing the parties and examining the learned Advocates for the parties, the Trial Court allowed the complaint, thereby convicting the applicant for the offence punishable under section 500 of the IPC.

3. Being aggrieved by the aforesaid judgment and order of the learned JMFC, the applicant/accused preferred appeal before the learned Additional Sessions Judge, Dhule, bearing Criminal Appeal No. 41/2015, which also came to be dismissed by the impugned order dated 13/07/2018 by the learned Additional Sessions Judge, Dhule.

(4)

4. Being aggrieved with the aforesaid impugned judgment and orders, the applicant has approached to this Court by filing the present criminal revision application under Section 397 of the Code of Criminal Procedure (Cr.P.C.).

5. At the outset, it is to be stated here that this Court is aware about the scope and jurisdictional powers under Section 397 of Cr.P.C. for entertaining the revision application. It is in order to prevent miscarriage of justice or if the orders passed by the learned Trial Courts are perverse or illegal, then this Court is having jurisdiction to entertain this revision application.

6. In pursuance of the aforesaid backgrounds, the learned Advocate for the applicant has raised certain questions which are necessary for the purpose of deciding instant criminal revision application. According to him, the orders passed by the learned Trial Court as well as the learned Appellate Court are totally perverse and illegal, and therefore, cannot be sustained in the eyes of law. He submits that the Trial Court had conducted the trial as a summary trial, though there was an option to try it as a regular criminal case. As the case was conducted as a summary trial, the evidence recorded by the learned JMFC represents the substance of the evidence, rather than the

(5)

verbatim record, as contemplated in summary proceedings. According to him, the essence of a summary trial is that the learned Trial Court Judge records, only the substance of the evidence rather than a complete evidence. He takes this Court through the provisions of Section 264 of the Cr.P.C. which are reproduced as under:-

“264. Judgment in cases tried summarily.- In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.”

7. In view of aforesaid provisions, in cases tried summarily, the Magistrate is required to record the substance of evidence alongwith a judgment containing a brief statement of the reasons for the finding. However, a combined reading impact of Sections 263 and 264 of the Cr.P.C., makes it obvious that, if the accused does not plead guilty, the learned Magistrate is only required to record the substance of the evidence, and the judgment must provide a brief statement of the reasons for the finding. It is further submitted by the learned Advocate for the applicant that the evidence was recorded by the learned Trial Court when Mr. S. A. Deshpande was the Presiding as the Judicial

(6)

Magistrate First Class. According to learned Advocate for applicant Mr. Paranjape, the said Presiding Officer had recorded the evidence in substance and thereafter the summary trial proceedings came to be decided by another Presiding Officer, namely, Shri S.G. Duble, Judicial Magistrate First Class, Dhule. Thus, according to Mr. Paranjape, the trial in fact was required to be made *de novo*, however, it has been decided by the learned Judge before whom the substance of the evidence was not recorded. According to Mr. Paranjape, when the learned Trial Court judge has not recorded the substance of the evidence, how he came to the conclusion as to what was recorded by the previous Presiding Officer. Since only the substance of the evidence is recorded in a summary trial, critical aspect of the witnesses' demeanor and testimonies remain solely in the memory of the presiding Judge. When that Judge is transferred, that memory departs with him. Consequently, the successor Judge cannot rely on such an abbreviated record and must conduct a *de novo* trial by recording the evidence afresh, if the case is to proceed as a summary trial. Therefore, he submits that the learned Appellate Court did not consider the aforesaid aspect and passed the illegal judgment and order thereby dismissing his appeal. He, therefore, submits that this Court under its revisional jurisdiction can entertain the instant application, as

(7)

there is procedure of law and the learned Trial Court has not delivered the judgment after following the correct procedure of law.

8. In support of his submissions, learned Advocate for the applicant relies upon the following judgments :-

(I) Nitinbhai Saevatilal Shah and anr. Vs. Manubhai Manjibhai Panchal and anr., 211 SCC CIV 4 805;

(II) Ulhas Vs. State of Maharashtra, 2016 ALL MR (Cri.) 3041;

(III) Shivaji Sampat Jagtap Vs. Rajan Hiralal Arora and the State of Maharashtra, 2007 Cri.L.J. 122;

(IV) Samadhan Motiram Patil Vs. State of Maharashtra, MANU/MH/1942/2014;

(V) Mehsana Nagrik Sahkari Bank Limited Vs. Shreeji Cab Company and others, 2014 Cri. L.J. 1953.

9. Learned Advocate for the applicant, therefore, submits that the judgment and orders passed by the learned Trial Court as well as the learned Appellate Court are totally illegal, and therefore, the instant criminal revision application deserves to be allowed by quashing and setting aside both the impugned orders.

10. Per contra, learned Advocate for respondent No.2 submits that the impugned judgment and orders passed by the learned Trial Court as well as the learned Appellate Court are correct and proper and requires no interference by this court. He relies upon the following cases :-

- (I) J. V. Baharuni and Anr. Vs. State of Gujarat and anr. (Criminal Appeal No.2221/2014, dated 16/10/2014;
- (II) A. Krishna Reddy Vs. State and anr. 1999 SCC ONLINE APP 546;
- (III) Mahendra s/o Sukhdeorao Pethe Vs. Vivek @ Raju s/o Ramrao Deshmukh & anr. 2014 ALL MR (Cri.) 2402;
- (IV) Pravin Vs. State of Maharashtra & ors. MANU/MH/2257/2022.

11. According to learned Advocate for respondent No.2, the evidence came to be recorded in full-fledged manner. According to him, if the copies of evidence depositions are perused, it would reveal that the Trial Court has recorded the evidence of the witnesses as a full-fledged trial, and therefore, the successor Presiding Officer, on the basis of said evidence, has committed no mistake by deciding the

(9)

criminal complaint, thereby convicting the applicant for the offence punishable under Section 500 of the IPC.

12 . For the purpose of academic discussion, assistance of the learned APP was also sought. Mr. Aher learned APP thereby working hard on the matter, has addressed to this Court by relying upon various judgments and relevant provisions of law. He drew attention of this Court not only to the provisions of Section 264 but also to Section 326 of the Cr.P.C. He relies upon various judgments to point out that the Courts have observed that when the evidence is recorded in detailed and lengthy manner and when accused has cross-examined the complainant and witnesses in detailed, in such a case, it cannot be said that the evidence is recorded in substance. Therefore, the Trial Court, even if the Presiding Officer before whom the evidence was recorded gets transferred, the successor Presiding Officer can, by relying upon same evidence, can proceed further with the trial. Mr. Aher also drew attention of this Court, by submitting that on numerous occasions, this Court has relied upon and followed the judgment of the Hon'ble Apex Court in **J. V. Baharuni and anr. Vs State of Gujarat and anr., (2014) 10 Supreme Court Cases 494.** Drawing support from the said judgment, Mr. Aher submits that although Sub-Section (3)

of Section 326 of the Cr.P.C. provides bars a successor Magistrate from acting on evidence recorded by his predecessor, this bar does not apply when the case is tried in substance as a regular summons case rather than in a summary way. According to him, where a case which was tried summarily and when the Court records evidence elaborately and in verbatim and gives full scope to cross-examine the witnesses, and if such procedure is adopted, then all this procedure which is adopted by the Trial Court indicates that the said Trial Court has not followed the summary procedure. Thus, he submits that where in a case which is tried summarily and the Court records the evidence elaborately and in verbatim, where the defence was given full scope to cross-examine the witnesses, such procedure adopted is indicative of the fact that it was not summary procedure. Therefore, the succeeding Magistrate can rely upon the evidence on record and *de novo* inquiry need not be conducted. Learned APP and learned Advocate for respondent No.2, thus, pray for dismissal of the instant criminal revision application.

13. After hearing the submissions advanced by the learned Advocates for the respective parties, I have gone through the impugned judgment and orders of both the lower Courts, as well as the judgments relied upon by both the parties. After going through the

(11)

material provisions relating to the instant matter, it is found that, in this case the predecessor Magistrate recorded the evidence and thereafter he got transferred and the new Presiding Officer, relying upon the evidence on record, proceeded further to convict the applicant. I have also gone through the deposition copies of the witnesses. In the present case, the depositions of the witnesses have been recorded in full, the witnesses were subjected to detailed cross-examination, and the record does not indicate that the evidence was recorded merely in the form of the 'substance of the evidence' as contemplated by Section 264 of the Cr.P.C. When the witnesses have been examined in detailed, then the said evidence cannot be said to be the evidence recorded in substance. The procedure actually followed by the learned Magistrate, therefore, demonstrates that the case was conducted as a regular summons trial and not as a summary trial. It is also well settled position of law that, once the evidence is recorded by the Court, having jurisdiction to do so, the depositions made by the witnesses do not lose their character as evidence in judicial proceedings, and the same can be validly used for the adjudication of the rights of the parties. Therefore, if the Magistrate records the evidence as is done in regular summons case, the succeeding Magistrate can act on the evidence so recorded by his predecessor or partly recorded by his

(12)

predecessor and partly recorded by himself, as provided in sub-section (1) of Section 326 of the Cr.P.C.

14. A summary trial is an abridged form of the regular trial and is resorted to in order to save time in trying petty cases. It is essentially a speedy trial dispensing with unnecessary formalities or delays and giving discretion to the Magistrate to try or not to try an offence, triable in summary manner. I find that the issue involved in the instant matter is no more *res integra*.

15. In Ullas vs. State of Maharashtra (Criminal Writ Petition No.216/2014), vide judgment dated 17/06/2016, the Aurangabad Bench of this Court had an occasion to deal with the similar issue. In the said case, this Court, by relying upon the judgment delivered in **Shivaji Sampat Jagtap vs. Rajan Hiralal Arora and State, 2007 CRI. LJ 122**, held that, if the case in substance was not tried in summary way, though was triable summarily, and was tried as a regular summons case, it need not be heard *de novo* and the succeeding Magistrate can follow the procedure contemplated under Section 326(1) of the Cr.P.C. However, where a case is tried in a summary way by following the procedure contemplated by the provisions of Chapter XXI of the Cr.P.C. and in particular Sections 263 and 264

therein, alone is intended to be excluded from the purview of Section 326(1) of the Cr.P.C. It appears that, after the evidence of the parties was closed, the disposal of the same discloses that the applicant that is defence side was given full scope to cross-examine the witnesses. The evidence recorded by the learned Magistrate is a full-fledged evidence led by the parties. It was not in the form indicated in Section 264 of the Cr.P.C. The evidence recorded in the present case clearly indicates that the case was not tried in a summary way. The case was in fact tried as a regular summons case though it was triable summarily. Under the circumstances, the submissions of learned Advocate for the applicant deserve to be rejected.

16. For the reasons stated hereinabove, it can safely be concluded that case was not being tried as a summary case, but was being tried as a regular case and since this Court has already held that the proceedings need not be conducted, there is no requirement to direct the Court to try the matter as a *de novo* trial. Hence, the only point which was raised by the learned Advocate for the applicant, having been answered in negative, and there is no other illegality or irregularity pointed out in the judgments passed by the learned Subordinate Courts, I decline to exercise jurisdictional powers under

(14)

section 397 of the Cr.P.C. Hence, the instant criminal revision application is dismissed

[SUSHIL M. GHODESWAR, J.]

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