

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.10 OF 2004
IN
CASE NO.542/P OF 2002

Nisar Ahmed Sidha Pathan

(Chheda-Khan)

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr.H.A.Solkar with Mr.N.B.Khan for Applicant.

MrV.B.Konde-Deshmukh, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 31, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Konde-Deshmukh, A.P.P. waives notice for Respondent.

3. As short question is involved, the matter is taken up for final disposal forthwith, by

consent.

4. At the outset, it needs to be mentioned that insofar as finding of guilt on merits is concerned, in my order dated March 1, 2005, I have already taken the view that there is no infirmity in the concurrent view taken by the Courts below and no interference is warranted in respect of that finding.

5. The only question that is required to be considered is about the question of sentence. Mr.Solkar for the Applicant submitted that the Applicant has been convicted for offence punishable under Section 279 and 338 of the Indian Penal Code. The Applicant is already 55 years of age and only earning member of his family, being a taxi driver. It was also argued that there is nothing on record to show that the Applicant has committed similar offence in the past, though, the Applicant is occupied as taxi driver for over 30 years. In this context, it was submitted that this is a fit case for invoking the provisions of Section 360 of the Criminal Procedure Code ('the Code').

6. Persuaded by the said argument, I had invited the report of the Probation Officer of the concerned area. Such report has been submitted by the Probation Officer dated 27th March 2005. The report positively recommends giving benefit of Section 360 of the Code to the Applicant, on Applicant executing necessary bond in terms of Section 360 of the Code. Learned A.P.P. submits that at least the report supports the submission canvassed on behalf of the Applicant.

7. Taking overall view of the matter and having regard to the nature of offence, coupled with the fact that no previous conviction has been reported in respect of the Applicant and the report of the Probation Officer indicates good conduct of the Applicant. Besides, Applicant is the only earning member of the family and crossed 55 years of age, the Applicant is ordered to be released on probation, on executing bond of good conduct.

8. Accordingly, while maintaining the

conviction of the Applicant, I direct that the Applicant be dealt with under Section 360 of the Code, and as such, be released on Probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question.

9. The Applicant to execute bond before the Trial Court of good conduct and to keep peace and be of good behaviour. Bond be executed within two weeks from today to the satisfaction of the Trial Court.

10. The Application succeeds on the above terms. Rule made absolute.

A.M.KHANWILKAR, J.