



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3771 OF 2023**

IN

CRIMINAL REVISION APPLICATION NO.330 OF 2023

Mayur Suryakant Ghankutkar] .. Applicant

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.Subodh Desai a/w Tushar Khandare and Vedang Deshpande for the Applicant.

Mr.Y.M. Nakhwa, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 19th October, 2023.

P.C.

1] Heard the learned counsel Mr.Subodh Desai for the Applicant, who has called in question the concurrent finding recorded against him, when he stand convicted for committing an offence punishable under Section 354(A)(1)(i) of the IPC and sentenced to suffer RI for 6 months and to pay fine of Rs.1,000/- i.d. to suffer RI for 1 month.

The order passed by the learned Metropolitan Magistrate is upheld by the Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai, on 26.09.2023 when the Appeal filed by him is dismissed.

2] With the able assistance of Mr.Desai and the learned APP Mr. Nakhwa, I have perused the impugned Judgment as well as the notes of evidence placed on record.

The key witness of the prosecution, PW 1 is consistent in her version when she deposed that on the day of incident, when she alighted at Dadar Railway Station at about 9.30 p.m. one person touched her inappropriately on her bottom and pinched her and she noticed that the person was wearing T shirt and half pant. She immediately caught him by hand and raised hue and cry, as a result, the persons present on the platform, gathered.

Her version is corroborated by PW 3, Police Naik, attached to Mumbai Central Railway Police Station when he also state that, at around 9.30 p.m., one woman was noticed shouting and she had caught hold of one person. The woman handed over this man to him and then he gathered from her that he had touched her inappropriately and thus outraged her modesty.

The evidence of PW 1, has remained unshattered and she remained firm on her version that upon the accused committing the act, she caught hold of him.

The submission that the CCTV footage is not collected, in my opinion, is not a sufficient ground to disbelieve the version of PW 1 which is corroborated by PW 3.

3] On appreciating the evidence placed on record, the Metropolitan Magistrate has recorded the finding of guilt by specifically taking note of the evidence of the victim and also by observing that the identity of the accused is not in dispute, as she immediately caught hold of him.

However, considering that this was his first offence, the Magistrate showered leniency upon him and despite convicting him under Section 354(A)(1)(i) of the IPC, sentenced him to suffer RI for 6 months.

4] I am not satisfied with the submission of Mr. Deai that the sentence imposed on him needs to be suspended and he deserves to be released on bail, for a simple reason that the offence against the Applicant held to be proved by the Magistrate and the commission of offence cannot be considered to be of minimum gravity, as it is the accused who in presence of several people outraged the modesty of the victim woman and his act definitely deserves an appropriate punishment being imposed, as there are several women who usually travel in local trains during night hours and particularly when the city of Mumbai is considered safe for women, where large woman population travel in the local trains fearlessly, even upto midnight, this act must be viewed with all seriousness and rightly the Magistrate as well as the Additional Sessions Judge has taken cognizance of the evidence that has been placed before them and handed over conviction and sentence to the accused..

5] In the wake of the decision in the case of *Preet Pal Singh vs. State of Uttar Pradesh & Anr. (2020) 8 SCC 645*, once the finding is recorded by way of Judgment of conviction, the presumption of innocence no longer is available to the accused and with the concurrent finding being recorded in the two Judgments against the accused, I do not think he deserves interim relief sought in the Interim Application.

Necessarily, the Interim Application is dismissed.

6] However, at the request of Mr. Desai, subject to the necessary papers being placed on record, list the Revision Application for final hearing in the week commencing from 11.12.2023.

[BHARATI DANGRE, J]