



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 570 OF 2023

Punam Suresh Rao Aundhakar
Aged about 37 Years, Occupation-Service;
R/o Near Mahendra Colony, Amar Nagar,
V. M. V. Tahsil and District Amravati. ... APPELLANT

VERSUS

The State of Maharashtra
Through the Police Station Officer, Police
Station, Gadgenagar, Tahsil and District
Amravati. ... RESPONDENT

WITH
CRIMINAL APPEAL NO. 600 OF 2023

Datta Purushottam Dhomane
Aged 47 Years, Occupation – Vice President
of Zilla Parishad, Amravati, R/o Riddhapur,
Tahsil Morshi, District Amravati. ... APPELLANT

VERSUS

State of Maharashtra
Through Police Station Officer, Police
Station, Gadge Nagar, Amravati, Tahsil and
District Amravati. ... RESPONDENT

Mr. Anil S. Mardikar, Senior Advocate a/w Mr. Y. P. Bhelande, Advocate for Appellant in Criminal Appeal No. 570/2023.

Mr. P. V. Navlani, Advocate for Appellant in Criminal Appeal No. 600/2023.

Mr. A. M. Joshi, APP for Respondent/State in both the Appeals.

CORAM : SANDIPKUMAR C. MORE, J.
JUDGMENT RESERVED ON : NOVEMBER 29, 2024.
JUDGMENT PRONOUNCED ON: DECEMBER 14, 2024.

COMMON JUDGMENT

. Both these Appeals are directed against one and the same Judgment and order of conviction dated 21/8/2023 passed by the learned District Judge-5 & Additional Sessions Judge, Amravati (*hereinafter referred to as 'the learned trial court'*) in Sessions Case No. 128/2019. The Criminal Appeal No. 570/2023 is preferred by the Appellant/Punam Suresh Aundhakar i.e. Original Accused No.2 in the aforesaid Sessions Case, challenging her conviction at the hands of learned trial court for the offence punishable under Section 186 of Indian Penal Code. She is sentenced to suffer Simple Imprisonment for three months. Whereas, Criminal Appeal No. 600/2023 is preferred by the Appellant/Datta Purushottam Dhokane i.e. Original Accused No.1, challenging his conviction in the aforesaid Sessions Case recorded for the offences punishable under Section 353, 323 and 506(i) of Indian Penal Code. The Appellant/Datta is sentenced to suffer Rigorous Imprisonment for two years for the offence punishable under Section 353 of Indian Penal Code, Rigorous Imprisonment for one year for the offence punishable under Section 323 of Indian Penal Code and Rigorous Imprisonment for one year for the offence punishable under Section 506(i) of Indian Penal Code.

2. To avoid ambiguity, both the Appellants are referred by their names as Appellant/Punam and Appellant/Datta.

3. Background facts of the case are as under :

Sagar Patil i.e. the Complainant (PW-3) was posted as Block Development Officer at Panchayat Samiti, Bhatkuli, District Amravati. The Appellant/Datta was Vice Chairman of Zilla Parishad, Amravati at the relevant time and he was also the Chairman of Agriculture and Husbandry Department. The Appellant/Punam was posted as Development Officer (Agriculture) at Panhayat Samiti, Bhatkuli, District Amravati. At the relevant time, she was working under the control of Complainant Sagar Patil. The Complainant, on 6/3/2018, vide his office order had relieved the Appellant/Punam by noting flaws in her work.

On 7/3/2018, complainant Sagar Patil attended his office at about 10.30 a.m. The other staff members were also present on that day. However, at about 5.00 p.m. on the same day, both the Appellants/Accused along with the father of Appellant/Punam entered the chamber of Sagar Patil, where he was doing his official work along with his staff. The Appellant/Datta then asked Sagar Patil to recall his office order dated 6/3/2018 and to reinstate the Appellant/Punam again under his control. Since Sagar Patil refused for the same, the Appellant/Datta threw a chair towards Sagar Patil and also slapped him by holding his collar and assaulted him by hand.

Besides, the Appellant/Datta threatened Sagar Patil by uttering words that he would set his office on fire. The Appellant/Punam had also quarreled with Sagar Patil at the relevant time, and therefore, Sagar Patil lodged report against both the Appellants by alleging that they obstructed him while discharging his official duty.

4. The chargesheet, on completion of investigation, was filed by the concerned Investigating Officer against both the Appellants for the offences punishable under Section 353, 323, 504 and 506(i) read with Section 34 of Indian Penal Code. The learned trial court conducted the trial against both the Appellants and convicted them as mentioned above. Hence, both the Appellants are before this Court.

5. Mr. Navlani, the learned Counsel for Appellant/Datta i.e. Accused No.1 submitted that there are various contradictions and discrepancies among the versions of the prosecution witnesses. According to him, presence of PW-2 Amit Deshmukh is not stated by the Complainant, whereas PW-2 Amit Deshmukh has not stated about the presence of other witness namely, PW-4 Ramkrishna Pawar. He pointed out that PW-4 Ramkrishna Pawar has not supported the version of Complainant Sagar Patil (PW-3), and the aspect of

obstruction caused by the Accused No.1 in discharging the official duty by the Complainant Sagar Patil, is not at all present in the instant matter.

6. The learned Counsel for Appellant/Datta relied on the spot panchanama, which does not support the occurrence of incident as alleged. In support of his submission, he relied on the following Judgments :

- The Judgment passed by this Court in the case of Azharali Jaferali Qureshi V/s The State of Maharashtra, 2024 ALL MR (Cri) 3648;
- The Judgment passed by the Hon'ble Apex Court in the case of Vadivelu Thevar V/s The State of Madras, AIR 1957 Supreme Court 614;
- The Judgment passed by the Hon'ble Apex Court in the case of Kunju Muhammed and Khumani & Anr. V/s State of Kerala, 2003 ALL MR (Cri) 2635 (S.C.);
- The Judgment passed by the Hon'ble Apex Court in the case of Krishnan & Anr. V/s State, 2003 ALL MR (Cri) 2643 (S.C.);
- The Judgment passed by the Division Bench of this Court in the case of Vimalbai Manohar Dobaliwar & Ors. V/s The State of Maharashtra, 2019 ALL MR (Cri) 2252;
- The Judgment passed by the Andhra Pradesh High Court in the case of D. Chattaiah and another V/s State of A.P, 1978 CRI.L.J. 1473;
- The Judgment passed by the Co-ordinate Bench of this Court in the case of Murlidhar K. Virulkar V/s State of Maharashtra, 2005 CRI.L.J. 3378;
- The Judgment passed by the Punjab and Haryana High Court in the case of Rajender Datta V/s The State of Haryana, 1993 CRI.L.J. 1025.

7. On the other hand, Mr. Mardikar, the learned Senior Counsel appearing for the Appellant/Punam submits that the Appellant/Punam as well as Appellant/Datta had gone to the Complainant Sagar Patil only for making request that Appellant/Punam be reinstated as she was wrongly relieved by him. He pointed out that they told him that he was not empowered to do the same. According to the learned Senior Counsel, charge under Section 186 of Indian Penal Code, under which the Appellant/Punam is convicted, is not at all sustainable, since Section 353 of Indian Penal Code and Section 186 of Indian Penal Code are two distinct offences, and therefore, the offence under Section 186 of Indian Penal Code cannot be an offence having lesser degree than the offence punishable under Section 353 of Indian Penal Code. He pointed out that the learned trial court has erroneously convicted the Appellant/Punam for the charge under Section 186 of Indian Penal Code, which was not cognizable and sanction under Section 195 of the Code of Criminal Procedure, 1973 (*for short, 'the Code'*) was definitely required for the same.

8. In support of his submissions, he relied on the following Judgments :

- The Judgment passed by the Hon'ble Apex Court in the case of Durgacharan Naik and others V/s State of Orissa, 1966 AIR Supreme Court 1775; and

- The Judgment passed by the Co-ordinate Bench of this Court in the case of Gajanan and other V/s State of Maharashtra, 2019 ALL MR (Cri) 2118

9. Heard rival submissions. Also perused the documents on record along with the Record and Proceedings of the Sessions Trial No. 128/2019. Also considered the submissions on behalf of the Appellants, in the light of Judgments relied upon by them.

10. It is to be noted that the case of prosecution in short is that when the Complainant Sagar Patil was present in his office on 7/3/2018, both the Appellants/Accused entered his chamber at about 5.00 p.m. along with the father of Appellant/Punam. At the relevant time, Appellant/Datta asked the Complainant Sagar Patil to reinstate the Appellant/Punam by recalling the order dated 6/3/2018 passed by the Complainant, whereby the Appellant/Punam was relieved. It appears that on that count there was a scuffle between the Appellant/Datta and Complainant Sagar Patil and the incident took place. Further, it is significant to note that the learned trial court has framed charge against both the Appellants/Accused for the offences punishable under Section 353, 323, 504 and 506 read with Section 34 of Indian Penal Code. However, on conclusion of trial, the Appellant/Datta was convicted for the offences punishable under Section 353, 323 and 506(i) of

Indian Penal Code. Both the Appellants/Accused are acquitted from the offence punishable under Section 504 of Indian Penal Code.

11. It is important to note that the Appellant/Punam, who was also charged with the similar offence as that of Appellant/Datta, is found guilty for the offence punishable under Section 186 of Indian Penal Code by the learned trial court. It is not in dispute that the charge under Section 186 of Indian Penal Code was not framed against either of the Appellants.

12. Mr. Mardikar, the learned Senior Counsel for the Appellant/Punam vehemently argued that though the ingredients of Sections 353 and 186 of Indian Penal Code are somewhat similar, but they are clearly distinct offences, and therefore, Section 186 of Indian Penal Code cannot be said as minor offence of the offence punishable under Section 353 of Indian Penal Code.

13. Admittedly, charge under Section 186 of Indian Penal Code is not framed against the Appellant/Punam. Moreover, the learned trial court in clear terms has observed in the Judgment itself as follows :

“46. Evidence on record also shows that accused No.2 has not assaulted or used criminal force to Sagar Patil (PW-3). She has also not caused any injury to Sagar Patil (PW-3). But she has obstructed Sagar Patil (PW-3) while he was

discharging his public function. According to me this act of accused No.2 clearly fall within Section 186 of Indian Penal Code.”

14. Thus, the trial court has already accepted that no ingredients of Section 353 of Indian Penal Code were established against the Appellant/Punam including the ingredients of Sections 323 and 506(i) of Indian Penal Code, but still the learned trial court held the Appellant/Punam guilty for the offence punishable under Section 186 of Indian Penal Code. Thus, whether this act of learned trial court, holding the Appellant/Punam guilty for the offence punishable under Section 186 of Indian Penal Code in absence of charge against her under that Section, can be justified, is the real question raised by Mr. Mardikar, the learned Senior Counsel.

15. Admittedly, no charge under Section 186 of Indian Penal Code is framed against the Appellant/Punam. However, in certain circumstances, the Court can convict the Accused for minor offence without framing separate charge under the same. However, the said act of Court is permissible only in certain contingencies. As per Section 218 of the Code, the Court must frame separate charges for distinct offences. However, under Section 222, it is provided under clause (2) that when a person is charged with a particular offence, but after trial it is proved that some minor offence of that main

offence is established, then the person can be convicted of that minor offence, even he is not charged with it.

16. Mr. Mardikar, the learned Senior Counsel, therefore, submitted that Sections 186 and Section 353 of Indian Penal Code operate in different spheres. According to him, Section 186 of Indian Penal Code cannot be a minor offence of Section 353 of Indian Penal Code. For that purpose, he heavily relied on the observation of the Hon'ble Apex Court in the case of *Durgacharan Naik V/s State of Orissa (cited supra)*, wherein it is held that :

“It is true that most of the allegations in this case upon which the charge under Section 353 of Indian Penal Code is based are the same as those constituting the charge under Section 186 of Indian Penal Code, but it cannot be ignored that Sections 186 and 353 of Indian Penal Code relate to two distinct offences and while the offence under the latter Section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186 of Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in discharge of his public functions but under Section 353 of Indian Penal Code, the ingredients of assault or use of criminal force while the public servant is doing his duty as such are necessary. The quality of the two offences is also different. Section 186 occurs in Chapter X of Indian Penal Code dealing with the Contempts of the lawful authority of public servants, while Section 353 occurs in Chapter XVI regarding the offences for affecting the human body. It is well established that Section 195 of the Code does not bar the trial of the accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that Section.”

17. Further, Mr. Mardikar, the learned Senior Counsel also relied on the observation of this Court in the case of *Gajanan and others V/s State of Maharashtra (cited supra)*, wherein it is observed that as per Section 195 of the Code, it is clear that no court shall take cognizance of the offence punishable under Section 186 of Indian Penal Code except on the complaint in writing of the public servant or of other public servant who is administratively subordinate to him. Therefore, in absence of charge and recording conviction by the trial court and maintained by the Sessions Judge for the offence punishable under Section 186 of Indian Penal Code against the Appellant/Punam is nothing but illegal and liable to be set aside.

18. In the instant matter, there is no charge under Section 186 of Indian Penal Code against the Appellant/Punam, however, from the observation of the Hon'ble Apex Court in the case of *Durgacharan Naik (supra)*, Section 186 of Indian Penal Code is not a minor offence of the offence punishable under Section 353 of Indian Penal Code. Further, the evidence on record clearly indicate that there was no overtact on the part of Appellant/Punam in respect of voluntarily obstructing the complainant when he was doing his official duty. Though one of the witnesses has stated that she was also abusing the complainant, but that has come on record by way of improvement.

19. The learned trial court itself has observed that Appellant/Punam did not assault or used criminal force to the Complainant Sagar Patil and also not caused any injury to the Complainant. As such, no ingredients for the offence under Section 186 of Indian Penal Code are established against the Appellant/Punam. Moreover, the learned trial court has not given any explanation as to how the act of Appellant/Punam falls within the ambit of Section 186 of Indian Penal Code. Therefore, the act of learned trial court convicting the Appellant/Punam under Section 186, by treating it as minor offence of the offence under Section 353 of Indian Penal Code without framing separate charge is apparently illegal and needs to be set aside.

20. It is extremely important to note that the learned trial court has already observed that no ingredients of the offence under Sections 353, 323, 504 and 506(i) of Indian Penal Code have been established against the Appellant/Punam. Therefore, considering all these aspects, the conviction recorded by the learned trial court against the Appellant/Punam under Section 186 of Indian Penal Code is not at all sustainable.

21. Now let us come to the charges levelled against the Appellant/Datta Purushottam Dhokane. Admittedly, he was Vice Chairman of Zilla Parishad, Amravati at the relevant time. He was also Chairman of

Agriculture and Husbandry Department. The learned trial court has convicted the Appellant/Datta for the offences punishable under Section 353, 323 and 506(i) of Indian Penal Code.

22. So far as the charge under Section 506(i) of Indian Penal Code against the Appellant/Datta is concerned, it is probably levelled since Complainant Sagar Patil had stated in his statement before the Police that the Appellant/Datta had allegedly intimidated him by saying that he would set on fire the office of Complainant with the help of petrol. However, if the evidence of prosecution is perused, then it is clearly evident that though the Complainant has stated in his deposition about the same, but at the same time he has clearly admitted in the cross-examination that such threatening of setting his office on fire is not mentioned in his police report (Exhibit-45), which was lodged immediately after the incident. Further, out of the two alleged eye-witnesses, only PW-2 Amit Deshmukh has stated about such threatening, but PW-4 Ramkrishna Pawar did not utter a single word in respect of the same in his chief-examination. Therefore, such type of threatening appears to be an afterthought.

23. Further, it has come on record that the said threatening was done simultaneously when the Appellant/Datta allegedly abused the Complainant.

It is significant to note that the learned trial court has already acquitted the Appellants from the charge under Section 504 of Indian Penal Code. As such, the allegation of such threatening of setting the office of Complainant on fire by the Appellant/Datta definitely appears doubtful, especially, considering the discrepancies in the evidence of PW-2 Amit Deshmukh, PW-3 Sagar Patil and PW-4 Ramkrishna Pawar.

24. The Appellant/Datta is also charged with the offence punishable under Section 353 of Indian Penal Code. For that purpose, the prosecution has claimed that the Appellant/Punam was relieved by the Accused on the earlier day of incident by observing that she did not perform her duty as expected. However, the said order was set aside by the Agriculture Department on the next day and when both the Appellants had gone to the Complainant for reinstating the Appellant/Punam on the post in the office of Complainant, the incident took place when the Complainant refused to do so. Thus, it appears that the genesis of the entire incident appears to be the initial order dated 6/3/2018, which is at Exhibit-50.

25. On perusal of the order (Exhibit-50), it appears that the Complainant, by observing the unsatisfactory work of the Appellant/Punam, had relieved her from his office for joining with her parent establishment. It

appears that the Appellant/Punam was from Agriculture Department. However, it further appears that the said relieving order of Appellant/Punam was in fact set aside by the Agriculture Development Officer, Zilla Parishad, Amravati on the very next day i.e. on the day of incident. The said order is also produced on record at Exhibit-51. On perusal of the said order it appears that the Agriculture Development Officer had in fact intimated the Complainant that his order of relieving the Appellant/Punam was erroneous, as the post of Appellant/Punam was not sanctioned in their department, but it was sanctioned in the office of Complainant itself. Further it appears from the said order that all the powers to initiate or conduct the departmental enquiry against the Appellant/Punam was with the Complainant only.

26. It is the defence of the Appellants that on the day of incident they had gone to the Complainant at about 5.00 p.m. in his office to request him for reinstatement of Appellant/Punam. The prosecution is claiming that since the Complainant refused to get reinstated the Appellant/Punam, there occurred hot verbal exchange between himself and the Appellants, and therefore, incident took place. However, so far as Section 353 of Indian Penal Code is concerned, it is in respect of using criminal force to deter a public servant from discharging his duty, and therefore, it has to be seen that whether these ingredients are involved in the present matter.

27. On going through the language of Section 353, it appears that for securing the conviction under this offence, it has to be established that the public servant was discharging his duty and while discharging such duty, the Accused assaulted him. In the instant case, the Complainant in his police report has stated that he was only present in his office. Nothing is mentioned in the complaint that he was doing some official work at the relevant time. He himself stated that the Appellant/Datta, at the relevant time, told him to reinstate the Appellant/Punam by recalling the action taken against her. Further, it appears that the Complainant had told the Appellant/Datta that he was unable to recall the order, and therefore, the incident took place.

28. From the complaint itself, it appears that there was no obstruction in the duty of Complainant at the hands of Appellants, but they, on the basis of order (Exhibit-51), passed by the Agriculture Development Officer on 7/3/2018 were asking to reinstate the Appellant/Punam. The language of said order (Exhibit-51) itself shows that the Agriculture Development Officer had already recalled relieving order of the Appellant/Punam from the office of Complainant. As such, it appears that the Appellants were not pressurizing the Complainant to recall the order, but they were only telling him to reinstate the Appellant/Punam on the basis of order Exhibit-51. It was not the case of prosecution or the Complainant that the Appellants had obstructed him from

passing any order of relieving the Appellant/Punam. Further, the entire evidence of prosecution indicates that the Complainant was merely present in his cabin and nothing has come on record that he was doing some official work at the relevant time.

29. Mr. Navlani, the learned Counsel for Appellant/Datta has relied on the Judgment of this Court in the case of *Murlidhar Virulkar V/s State of Maharashtra* (cited supra), wherein it is held as under :

“11. In view of what is held above, that the charge of obstruction in discharge of public duty with intention to deter the public servant in performing his duties is not proved against the appellant-accused. The aspect of deterring public servant from discharging public duty thus being excluded. What remains is the assault under Section 324 of Indian Penal Code. To examine legality of conviction and sentence under Section 324 of Indian Penal Code, the other part of evidence of the complainant as to whether the injuries caused by the accused to the complainant needs to be examined. In view of plea of appellant that he too had suffered hurt due to head injury requires to be attended to and his right of private defence comes into play. The evidence of complainant therefore needs cautious scrutiny and careful assessment. The injury suffered by complainant is too trivial and general and could be accidental as a consequence of defence by the accused. Moreover, since the prosecution evidence has failed to prove the crucial ingredients on Sections 332 and 353 of Indian Penal Code, the testimony of prosecution witness is impeached and the weight whatever thereto is lost. The story put up by the accused in the present case, as complainant in cross case, becomes available as a positive suggestion of self defence and is hereby accepted. The result is that the

judgment and order passed by the Sessions Court calls for interference.”

30. As per the aforesaid observation, to establish the charge under Section 353 of Indian Penal Code, it has to be shown that the assault or criminal force is used by the Accused to deter a public servant from discharge of his duty. In the instant case, nothing has come on record that the Complainant was doing some official work, and the Appellants, by entering his office actually obstructed him from doing that duty.

31. Further, the learned Counsel has relied on the Judgment of Punjab and Haryana High Court in the case of ***Rajender Datt V/s State of Haryana*** (cited supra), wherein it is observed as follows :

“ A bare glance through the S. 353 leaves no doubt that the assault or intimidation to the public servant must be with an intent to prevent or deter that person from discharging his duty as such public servant. Therefore, where the accused allegedly assaulted the complainant suspecting him to be instrumental in accused’s transfer when the complainant was proceeding to his office for resuming his duty, it cannot be said that the accused had assaulted him during the execution of his duty so as to attract S. 353 i.e. assault to deter public servant from discharge of his duty.”

32. If the aforesaid observation in respect of charge under Section 353 of Indian Penal Code and the facts of this case are considered, then it is clearly evident that the necessary ingredients for recording conviction under

Section 353 of Indian Penal Code are missing here. There is no reliable evidence on record to show that the Complainant was doing some official duty at the time of incident and the Appellants assaulted him at the relevant time. Thus, the charge under Section 353 of Indian Penal Code is also not sustainable against the Appellant/Datta, in the backdrop of the aforesaid facts.

33. So far as the charge under Section 323 of Indian Penal Code against the Appellant/Datta is concerned, the Complainant has claimed that when he refused to reinstate the Appellant/Punam, Appellant/Datta got furious and threw a chair on him and also by holding his collar, slapped him on the cheek. Admittedly, these contentions are mentioned in the police report (Exhibit-45), lodged by the Complainant immediately after the incident. However, there are so many contradictions among the prosecution witnesses in respect of the incident narrated in the report.

34. Though PW-2 Amit Deshmukh has stated that he had seen the Appellant/Datta abusing Complainant at the relevant time and spectacle of Complainant was lying down and the buttons of his shirt were displaced, but these contentions are not supported by the Complainant himself. The Complainant has not stated so in his evidence. Further, this witness, in the cross-examination, has clearly given certain admissions which have created

doubt about his presence at the time of incident. He has specifically stated in the cross-examination that he had not given any intimation to the police as to who was abusing to whom and who had scattered the chairs in the cabin of Complainant, as stated in the chief-examination.

35. It is important to note that the Complainant also has not stated that the chairs from his office were scattered after the incident. Moreover, nothing has come on record in the map drawn in the spot panchanama (Exhibit-73), though it is mentioned that the glass on table and chairs were scattered. The panch witness PW-1 Govind Chulet has not supported the case of prosecution. Moreover, PW-7 PSI Balaji Pund has also accepted in his cross-examination that if any weapon or broken articles are found on the spot of incident, they are seized in normal course. However, he further stated that he did not seize anything from the spot of incident. Therefore, the prosecution case that the chairs were scattered on the spot of incident, has become highly unbelievable.

36. However, it has come on record that after the incident, the Complainant had immediately approached the Police Station for lodging report about the incident, but he was first referred to the General Hospital, Amravati for medical treatment. The prosecution has also examined the

Medical Officer PW-5 Dr. Mohd. Ibran Shah Rashid Shah, who had examined the Complainant just after the incident. It has come in the evidence of this Medical Officer that on examination of Complainant, he found following injuries on the person of Complainant :

- (a) Blunt trauma to left zygomatoc area of chin with swelling extending to lower eyelid having redness or redish appearance to eye.
- (b) Blunt trauma to chest swelling present at sternal area.

Further, he has also proved the contents of MLC Report (Exhibit-58). The learned Counsel for Appellant/Datta has specifically pointed out the part of cross-examination of this Medical Officer, wherein he has clearly stated that the Complainant had not given any history as to how he sustained injuries. Further, he also drew attention to the part of that cross-examination, wherein the Medical Officer had opined that injury No.(a) was also possible, if someone rubs his hands over his cheeks forcibly.

37. By relying on this admission, the learned Counsel for Appellant/Datta submitted that there was every possibility that the Complainant himself might have inflicted the injury No.(a) to settle score with the Appellant/Datta. However, no suggestion to that effect has given to the Complainant in the cross-examination. Thus, the possibility of scuffle between the Appellant/Datta and Complainant cannot be ruled out and in the heat of

the moment, Appellant/Datta might have caught hold the collar of Complainant and slapped him. The prosecution evidence shows that immediately after the incident the Complainant had approached to the Police Station, from where he referred to the Medical Officer.

38. Further, as soon as after completion of his medical examination, he lodged report of the incident. However, as discussed above, the incident which was actually narrated by the Complainant while deposing before the Court might not have happened, due to contradictions and discrepancies in the versions of the eye-witnesses, but there is a scope to hold that the Appellant/Datta, in the heat of moment, might have slapped the Complainant. As such, though the ingredients of offences under Section 353 and 506(i) of Indian Penal Code against Appellant/Datta are missing, but it can safely be inferred that the prosecution has definitely established the ingredients of Section 323 of Indian Penal Code against him.

39. It is significant to note that the learned trial court has convicted the Appellant/Datta for the charge under Section 323 of Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for one year, but not imposed any fine upon him. However, it is to be noted that there are so many contradictions in respect of the occurrence of incident among the prosecution

witnesses. Moreover, the charge under Sections 353 and 506(i) of Indian Penal Code against the Appellant/Datta appears unsustainable, and therefore, the sentence awarded to the Appellant/Datta by the learned trial court for the offence punishable under Section 323 of Indian Penal Code, which is non-cognizable, appears too harsh.

40. It is to be noted that the Appellant/Datta was Vice Chairman of Zilla Parishad, Amravati and was also the Chairman of Agriculture and Husbandry Department at the relevant time, and therefore, the incident of slapping might have taken place due to ego clashes between the Complainant and himself. Therefore, considering these facts, the sentence of Rigorous Imprisonment for one year awarded to the Appellant/Datta can be modified and reduced to imposition of fine only.

41. Thus, considering all these aspects, Criminal Appeal No. 570/2023 filed by the Appellant/Punam i.e. Original Accused No.2 is hereby allowed and the conviction recorded under Section 186 of Indian Penal Code against her is hereby set-aside and she stands acquitted from the aforesaid offence. Her bail bond stands cancelled.

42. On the other hand, Criminal Appeal No. 600/2023 filed by the Appellant/Datta i.e. Original Accused No.1 is hereby partly allowed. The

conviction recorded against the Appellant/Datta under Sections 353 and 506(i) of Indian Penal Code is hereby set-aside and he is acquitted from the aforesaid offences. However, his conviction under Section 323 of Indian Penal Code is maintained as it is, but the punishment of Rigorous Imprisonment for one year awarded to him by the learned trial court in respect of the aforesaid offence is set-aside and instead of that, fine of Rs.1000/- is imposed upon him. The fine amount be deposited in this Court.

43. Both the Criminal Appeals stand disposed of in above terms.

(SANDIPKUMAR C. MORE, J.)

vijaya