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

CRIMINAL REVISION APPLICATION NO. 184 OF 2017

Rajeshkumar S/o Mangaldas Ramteke
Aged about years, Occ: Labour,
R/o. Asoli, Tah. & District Gondia. **APPLICANT**

Versus

The State of Maharashtra,
Thr. Police Station Officer, Sakoli,
Tah. Sakoli, District Bhandara. **NON-APPLICANT**

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Mr. U.K. Bisen, Advocate for the Applicant.
Mr. A.M. Joshi, APP for the Non-applicant/State.

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CORAM : URMILA JOSHI PHALKE, J.

RESERVED ON : 26th FEBRUARY, 2026.

PRONOUNCED ON : 07th MARCH, 2026.

ORAL JUDGMENT :-

1. By preferring this Revision, the Applicant has challenged the judgment and order of conviction passed by the Judicial Magistrate First Class, Sakoli dated 01.02.2012 in R.C.C. No.59/2006, by which the Applicant is convicted of the

offence punishable under Section 420 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs. 1,000/- in default of payment of fine to suffer rigorous imprisonment for one month, which is confirmed in Criminal Appeal No.4/2012 by the Additional Sessions Judge, Bhandara dated 03.11.2017.

2. Brief facts which are necessary for the disposal of the present Revision are as under:

2(i). The Applicant is the original accused in R.C.C. No.59/2006. He is prosecuted on the basis of a report lodged by Ranjit Deoraoji Lade at Sakoli Police Station alleging that the present Applicant has collected huge amount from various persons either on the pretext of giving job or giving admission and cheated them. On the basis of the said report Police have registered the crime against the present Applicant.

2(ii). After registration of the crime, the wheels of the investigation started rotating and the Investigating Officer has recorded the relevant statements of witnesses and after

completion of the investigation submitted charge-sheet against the present Applicant.

2(iii). Learned Judicial Magistrate First Class, Sakoli framed charge against the present Applicant vide Exh.8. The contents of the charge were read over and explained to him for which he pleaded not guilty and claimed to be tried. In support of the prosecution case, the prosecution has examined in all 8 witnesses i.e. PW-1/Ranjit Devrao Laade vide Exh.20, PW-2/Madhukar Ghanshyam Tarone vide Exh.23, PW-3/Vinayak Madku Phunde vide Exh.30, PW-4/Gajanan Kashiram Brahmankar vide Exh.31, PW-5/Loknath Dinba Patode vide Exh.35, PW-6/Ashwini Gopichand Nahokar vide Exh.42, PW-7/Shama Mohammad Abid Sheikh vide Exh.46 and PW-8/Ashok Ganpatrao Donadkar Investigating Officer vide Exh.74.

2(iv). Besides the oral evidence, the prosecution placed reliance on Oral Report-Exh.21, Seizure memo-Exhs.26 & 39, Spot panchnama-Exh.36, Memorandum statement of accused-Exh.37, Discovery panchnama at the instance of the accused-Exh.38 and First Information Report-Exh.75.

2(v). The learned Magistrate appreciated the evidence and comes to the conclusion that the prosecution proved its case beyond reasonable doubt against the accused and convicted him as aforestated. Being aggrieved and dissatisfied with the said judgment and order of conviction, the present Applicant has preferred the Appeal. The Appeal also came to be dismissed by the learned Appellate Court by observing that the evidence of the witnesses remained unshaken in their cross-examination conducted on behalf of the Applicant accused and the evidence sufficiently shows that the present Applicant has obtained the money against unlawful contract and thereby committed an offence, the intention since inception appears to be there on the part of the present Applicant as he has obtained the money for illegal activities and thereby dismissed the Appeal. Being aggrieved and dissatisfied with the same the present Revision Application is preferred.

3. There is no dispute as to the legal principle is concerned that the scope of interference by this Court in revisional jurisdiction under Section 397 of the Code of Criminal Procedure (for short "Cr.P.C.") is limited. In its

revisional jurisdiction, this Court is not expected to sit as Court of Appeal and re-appreciate the evidence. However, when the findings of the Courts below appears to have been recorded on the basis of no evidence, or evidence which even if believed in entirety cannot prove the guilt of the accused for the offences charged, this Court would be justified in exercising its jurisdiction under Section 397 of Cr.P.C.

4. The prosecution's case is wholly based on the oral evidence of the Complainant and the other witnesses who alleged that the present Applicant obtained the money from them on one or the other pretext and thereby duped them. To prove the said allegations, the prosecution placed reliance on the evidence of PW-1/Ranjit Laade who examined vide Exh.20, who testified that on 01.04.2005 he came to know that the present Applicant is starting a course of Diploma in Special Education in his College, and therefore, he is recruiting the clerks and other persons for running his college. This information was given to him by one Mendhe and thereafter he met the present Applicant in one pan stall of one Mendhe near the Agrawal Petrol Pump and requested him to recruit him as a

clerk in his College. At that time, the accused demanded from him Rs. 1,50,000/- for giving him a job as a clerk in the College and thereafter agreed to accept the amount of Rs.45,000/- for securing service in the College. Accordingly, he paid the amount of Rs. 45,000/- on 09.05.2005 to the present Applicant in the office of College at Sakoli in presence of Madhukar Tarone. On 01.04.2005, he joined the service in the College and it was informed him that he will receive Rs.700 as honorarium for the initial period and thereafter the salary as per the rules of Zilla Parishad. When he joined the duty students who are coming for the enquiry as to when the College is going to commence. He came to know that the present Applicant has obtained the money from various students and cheated them.

5. The evidence of PW-2/Madhukar Tarone is also on the same line, who also deposed that he has completed his education by completing the Diploma in Library Science. He came to know that, the present Applicant is starting the College, and therefore, he approached to him for securing the job of Librarian. From him the Applicant has demanded Rs. 60,000/- and in presence of his uncle he has given the amount of

Rs. 60,000/-. The Applicant assured him to pay Rs.500/- to Rs.600/- per month as salary for initial some months and thereafter to pay full salary. He joined the College of accused No.1 as Librarian and thereafter the students started joining the College but the present Applicant never vitiated the College and the salary was never paid to him. Thus, he was cheated by the present Applicant.

6. The evidence of PW-3/Vinayak Phunde also deposed that, for the job of a Peon in his College the amount of Rs. 1 Lakh was demanded from him. He has arranged the amount of Rs. 30,000/- and the said amount was accepted by the present Applicant. However, no job was given and no salary was given to him. PW-4/Gajanan Brahmankar is a student who approached to the employees of the College for obtaining admission for the Diploma for the Human Resources and the amount of Rs. 70,000/- was obtained from him but neither the College was started nor the amount was given to him.

7. The evidence of PW-5/Loknath Patode states that, the amount of Rs. 60,000/- was obtained from his nephew PW-2/Madhukar Tarone on account of giving him a job and no

salary was given to him and the amount was also not paid to him. Similarly, from PW-6/Ashwini Nahokar the amount of Rs. 40,000/- was obtained for giving admission for Diploma in Special Education and College never started. The false promise was given to them. The evidence of PW-7/Shama Sheikh also shows that the amount was obtained from various persons on one or the other pretext and thereby they are cheated.

8. Thus, all the witnesses are cross-examined at length but as far as the aspect of obtaining the money is concerned which is not shattered during the cross-examination. The cross-examination of PW-1/Ranjit shows that the Applicant has given advertisement in the newspaper stating the vacancy in the College are to be filled. Therefore, he approached the Applicant and obtained from him an amount of Rs. 45,000/-. His evidence shows that, other witnesses Madhukar Tarone gave Rs. 60,000/-, Vilas Nakhate gave Rs. 40,000/-, Vinjayak Phunde gave Rs.30,000/- and Gajanan Brahmankar gave Rs. 40,000/-. Thus, the amounts were collected from various persons either for giving the job or giving the admission. The cross-examination of PW-2/Madhukar Tarone states that, there

was no advertisement in the newspaper regarding the vacancy of post of Librarian in the College. It is further came in his cross-examination that, he had not narrated before the Police that the accused had demanded Rs.60,000/- and rest of the cross-examination is in the denial form. The cross-examination of PW-3/Vinayak Phunde also states that, though the amount was obtained from him but no appointment letter was given to him regarding his appointment. There was no advertisement published in the newspaper regarding the vacancy for the post of Peon. He has not personally verified by visiting the College regarding the existence of the College. In the cross-examination of PW-3/Vinayak Phunde nothing incriminating comes on record. It is only in the form of denial the cross-examination was carried out. Similarly, PW-4/Gajanan Brahmankar is also cross-examined who has also admitted that there was no advertisement published in the local newspaper. PW-5/Loknath Patode who is the uncle of Madhukar Tarone who has corroborated the version of PW-2/Madhukar Tarone that the amount was given to the present Applicant for securing the job to Madhukar Tarone. From PW-6/Ashwini, the amount was obtained for giving her admission in the College but the College

was never started. Similar is the evidence of PW-7/Shama Sheikh. PW-8/Ashok Donadkar is the Investigating Officer who has narrated about the investigation carried out.

9. Considering the nature of the evidence adduced by the prosecution, which was not shattered during the cross-examination. The learned Judicial Magistrate First Class observed that, there was an intention since inception and the prosecution has proved all the ingredients of the offence punishable under Section 420 of IPC against the present Applicant beyond reasonable doubt and convicted the present Applicant. The said findings are confirmed by the Appellate Court by observing that the evidence of the witnesses remained unshaken in their cross-examination, the evidence is consistent as far as the constitution of the offence punishable under Section 420 of IPC is concerned.

10. To attract the offence punishable under Section 420 of IPC, the basic ingredients which are necessary to be proved by the prosecution that there was intention since inception.

11. To constitute an offence under Section 420 of IPC there has to be (1) Deception of any person, either by making a false or misleading representation or by other action or by omission; (2) Fraudulently or dishonestly inducing any person to deliver any property, or (3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

12. A reading of the entire material on record clearly reflects that it was totally an unlawful contract between the present Applicant and the prosecution witnesses where money was being paid for securing a job in the Government Department. It is apparent that, the present Applicant has taken undue advantage of unemployment and taking the benefit of weakness of the unemployed youths the money was obtained from them and they were duped. The prosecution witnesses have paid the money for either for securing for job or for securing the admission in the College. Thus, the amounts are obtained by the present Applicant against the unlawful contract.

13. The essential ingredients are intention to deceive any person fraudulently, to dishonestly induced the persons so deceived to deliver any property which he would not have done if he was aware of the deception. The essential ingredient therefore is a dishonest intention from the very inception. In the present case, there is allegation of dishonest intention from the inception as there was no advertisement by the present Applicant to fill up the post in fact the College itself was not in existence and the present Applicant has obtained the money from various students against the admissions for various courses and also obtained money from the unemployed youths for securing the job. Thus, the allegations of a fraudulent and dishonest intention from the very inception is apparent from the entire evidence. A bare perusal of the evidence reveals that, on taking into consideration all the allegations levelled against the present Applicant, admittedly, the employment in the Government is available on advertisement and selection is to be on the basis of merits. It cannot be purchased by the money. By taking disadvantage of the weakness of the unemployed youth the amounts were obtained from them and thereby they were deceived. Therefore, the *prima facie* case is made out against

the present Applicant. Therefore, the learned Trial Court as well as the learned Sessions Judge has confirmed the sentence.

14. Learned Counsel for the Applicant vehemently submitted that, the benefit of the provisions of Probation of the Offenders Act, 1958 (for short "P.O. Act") be extended to the present Applicant. In support of his contention, he placed reliance on the judgment of the Punjab and Haryana High Court in the case of ***Om Parkash Vs. State of Punjab, CRR No. 170/2016 (O&M), decided on 19.03.2019***, wherein the Punjab and Haryana High Court held that Section 360 of Cr.P.C., leaves no manner of doubt that a Court must consider the age, character or antecedents of the offender and the circumstances in which the offence was committed and then decide whether he is entitled to be released on probation of good conduct or not. Section 3 of Probation of Offenders Act, 1958, further entitles a convict to release after due admonition if the case falls within the parameters prescribed therein.

15. This aspect is also considered by the Hon'ble Apex Court in the case of ***Dalbir Singh Vs. State of Haryana & Ors., 2000 AIR SCW 1653***, and it is observed that, in the matter of

release of a person convicted of an offence on probation of good conduct the Parliament has made it clear that it has to be only if the Court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence." Parliament has left it to the Court to decide when and how the Court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. The word "expedient" had been thoughtfully employed by the Parliament in the section so as to mean it as "apt and suitable to the end in view." Here the word "expedient" is used in Section 4 of the Probation of Offenders Act in the context of casting a duty on the Court to take into account "the circumstances of the case including the nature of the offence." This means Section 4 can be resorted to when the Court considers the circumstances of the case, particularly the nature of the offences, and the Court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

16. While expressing the meaning to the word "expedient", it is observed by the Hon'ble Apex Court that; "Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' means 'apt and suitable to the end in view,' 'practical and efficient,' 'politic,' 'profitable, 'advisable,' 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle conducive to special advantage rather than to what is universally right'. It was further held by the Hon'ble Apex Court that, the Court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the Probation of Offenders Act in the context of casting a duty on the Court to take into account "the circumstances of the case including the nature of the offence." This means Section 4 can be resorted to when the Court considers the circumstances of the case, particularly the nature of the offence, and the Court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

17. In another judgment in the case of ***State, Through Police Inspector, Mapusa Police Station, Goa Vs. Shaikh Mohammad Rafiq s/o Shaikh Amrul Hassan, 2009 ALL MR (Cri) 3489***, the Court has observed that, the object of the P.O. Act is to attempt for the possible reformation of certain offenders, instead of inflicting on them the normal punishment for their offences and thereby to prevent the turning of the offenders into criminals, by their association with hardened criminals of mature age within the walls of a prison. However, while keeping this object in view, it must also be borne in mind that the exercise of the discretion given to the Courts under Section 4 of the Act needs considerable sense of responsibility and the Courts should not be misled into the free use of the section by misplaced leniency and sympathy. The provisions of the said Act relating to probation must be applied with discretion for otherwise rather than preventing the turning of the offenders into criminals, it may assist in the manufacture of criminals, for it may be become known that first offences even in respect of rather serious lapses can be committed with impunity, by merely offering to execute a bond for good behaviour. This would certainly be not in the interest of the

offender as well as the society. Before making an order under Section 4(1) of the Act, it is necessary for the Court to consider (i) circumstances of the case, (ii) nature of the offence and (iii) the character of the offender. It will thus be seen that the circumstance that no previous conviction is proved against the offender would not by itself be a sufficient reason for inflicting no penalty upon him. Calling for a report from the probation officer is, therefore, absolutely necessary in the interest of the offender and the society, and the same should be considered by the Court before releasing the offender on probation of good conduct. Releasing the offender on probation without proper enquiry as regards the character and antecedents of the accused would be exposing the society to the risk of the offender repeating the unlawful act and to bring the whole scheme of the probation into discredit.

18. There is no doubt that sub-section (1) of Section 4 of the P.O. Act, has a non obstante clause but at the same time it gives discretion to the Court to release an accused on probation after considering the nature of the offence, the character of the offender and after finding out whether it is expedient to release

him on probation of good conduct. Expression "expedient" means desirable. The Apex Court in ***Dalbir Singh*** (infra) has observed that the word "expedient" was thoughtfully employed by Parliament so as to mean "apt and suitable to the end in view". The Apex Court further held that the Court must construe the said word in keeping with the context and object of the provisions in its widest amplitude.

19. Considering the facts and circumstances of the case which shows that various persons who are the students and unemployed youths were on the false promise of giving job and the amount was extracted from them and they are cheated by the present Applicant. Thus, considering the nature of the allegations levelled against the present Applicant and the same are proved against him through the consistent evidence of various witnesses. There is nothing on record to show that, it is expedient or apt and suitable to release him on a probation by giving him the benefit of the provisions of the P.O. Act. No circumstances are brought on record to show that, it is expedient in the interest of justice to give him a benefit of P.O. Act when he has committed the offence like cheating by

extracting the money by entering into the unlawful contract with the various persons. After completion of education the unemployed youth are under expectation to get a good job, by taking disadvantage of the weaknesses of such type of unemployed youths, who are not getting job despite their qualifications and extracting the money from them and committing the offence of cheating, is a serious offence against the present Applicant. The intention since inception is present, and therefore, considering the arguments addressed by the learned Counsel for the Applicant, I do not find that this is a fit case wherein such benefit can be given to the present Applicant under the circumstances that various students and the unemployed youths are cheated by the present Applicant by obtaining the money from them. In view of that, the prayer of the learned Counsel for the Applicant that, the benefit of P.O. Act be given to the present Applicant, is not sustainable.

20. By applying the principles that the scope of interference by this Court in revisional jurisdiction is very limited. This Court is not a Court of appeal to re-appreciate the evidence. The interference in the finding of the Courts below

should be when the findings are when there is no evidence or the evidence which even if believed is entirety cannot prove the guilt of the accused for the offences charged. There is no perversity in the judgment and order of the learned Trial Court as well as the learned Appellate Court, and therefore, the Revision Application being devoid of merits liable to be dismissed. Accordingly, I proceed to pass the following order.

O R D E R

i. Criminal Revision Application is **dismissed**.

21. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte

Signed by: Mr.S.D.Bhimte
Designation: PA To Honourable Judge
Date: 07/03/2026 16:00:58