

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

C.R.R. No. 3957 of 2005

Sk. Abu Saleh @ Palash

Versus

The State of West Bengal

None Appears On Behalf of any of the Parties

Hearing Concluded On : 21.11.2025

Judgment on : 02.12.2025

Krishna Rao, J.:

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 read with Section 401 of the Code of Criminal Procedure, 1973 for quashing of the judgment passed by the Learned Judicial Magistrate, 1st Court, Uluberia, Howrah dated 28th September, 2000, in Complaint Case No. 199C/93 corresponding to T.R. No. 181/93 wherein the petitioner is convicted to undergo simple imprisonment for one (1) year and to pay fine of Rs. 1000/- in default to suffer further simple imprisonment for three (3) months for the offence

under Section 354 of the Indian Penal Code, 1860 and the judgment passed by the Learned Additional Sessions Judge, 1st Court, Howrah in Criminal Appeal No. 28/2000 dated 22nd November, 2005, wherein the Learned Judge being the Appellate Court modified the judgment passed by the Learned Trial Court by reducing the conviction of sentence of the petitioner from one (1) year to six (6) months simple imprisonment without interfering with the fine of Rs. 1000/-.

2. The matter was fixed on 7th November, 2025, but none appears on behalf of the petitioner and the case was adjourned till 20th November, 2025. The matter was taken up for hearing on 21st November, 2025 but on the said date also none appears on behalf of either of the parties and no accommodation is prayed for.
3. On the basis of the complaint of P.W.1, namely, Tanjina Khatoon, a complaint case was registered being Case No. 199C/93 and after cognizance for the offence under Section 323/354 summons was issued to the accused persons including the petitioner herein. On 28th September, 2000, the Learned Judicial Magistrate, 1st Court, Uluberia, Howrah, passed a judgment by convicting the petitioner and another accused, namely, Khokon Mallick for the offence under Section 354 of the Indian Penal Code, 1860 and sentenced to suffer simple imprisonment for one (1) year and a fine of Rs.1000/- in default to suffer further imprisonment for three (3) months. Being aggrieved with the conviction, the petitioner preferred an appeal before the Appellate Court and the same was disposed on 22nd November, 2005 by reducing

the sentence of one (1) year to six (6) months without interfering with the fine amount. The petitioner has filed the present revisional application on 23rd December, 2005. By an order dated 10th January, 2006, this Court allowed the petitioner to continue with the bail granted by the Learned Trial Court and the Appellate Court during the pendency of this case.

4. On perusal of records, it reveals that on the earlier occasion the revisional application was dismissed for default but subsequently on the prayer of the petitioner, the order of dismissal was recalled. Even after recall of the order of dismissal, the petitioner failed to appear before this Court and thus this Court has no other option but to decide the present revisional application on merit as since the year 2005, the revisional application is pending for disposal and the petitioner is enjoying the interim order.
5. As per the case of the complainant on 14th October, 1993 at about 7.00 a.m., the petitioner along with other three persons, namely, Sk. Ali Ahamad, Asif Haider Mallick and Khokan Mallick over the issue of uprooting small gourd plant, the petitioner along with the above named persons started abusing the mother of the complainant in filthy languages and when the mother raised objection, Sk. Ali Ahamad pull down the mother of the complainant by holding her hair from her house to the courtyard and all the accused persons assaulted the mother of the complainant by fists and blows. When the complainant went to rescue her mother, the accused Asif Haider assaulted her by

sabal (cross bar) on her head and other accused persons assaulted her by fists and blow. At the same time, the accused Sk. Abu Saleh and Khokon Mallick outraged her modesty by touching her breasts and tearing her blouse.

6. The complainant along with her mother went to the Uluberia Police Station and lodged a diary and thereafter they went to Hospital for treatment. It is the case of the complainant that they sustained injury due to which they could not file a complaint immediately. Learned Judicial Magistrate on examination of the complainant and her witnesses took cognizance against all the accused persons for the offence under Section 323/354 of the Indian Penal Code, 1860 and on receipt of summons, the accused persons appeared before the Learned Judicial Magistrate and faced trial.
7. Learned Judicial Magistrate on conclusion of trial found not guilty of any of the accused persons for the offence under Section 323 of the Indian Penal Code, 1860 but has convicted the accused Sk. Abu Saleh @ Palash and accused Khokon Mallick for the offence under Section 354 of the Indian Penal Code, 1860 and sentenced them to suffer 1 (one) year of simple imprisonment and fine of Rs. 1000/- in default to pay fine to suffer further simple imprisonment of 3 (three) months. Learned Sessions Judge being the Appellate Court modified the conviction of the petitioner by reducing the sentence from 1 (one) year to 6 (six) months but has not modified the fine amount.

- 8.** As the Learned Trial Court has acquitted the petitioner and other accused persons for the offence under Section 323 of the Indian Penal Code, 1860 and the State has not preferred any appeal, this Court has not considered the said aspect.
- 9.** Now the only question whether the conviction of the petitioner under Section 354 of the Indian Penal Court, 1860 which is modified by the Appellate Court is sustainable under law or not.
- 10.** It is the specific case of the complainant that when the complainant went to rescue her mother from the hands of the accused persons, the petitioner along with another accused, namely, Khokon Mallick outraged her modesty after touching her breasts and torn her blouse. During the examination of the complainant as P.W.1, she has categorically stated that the accused Sk. Abu Saleh and Khokon Mallick forcibly placed their hands on her both breasts and torn her blouse for which she has sustained pain on her breasts and ribs.
- 11.** P.W.2, Pintu Paul who is an independent as well as an eye witness of the incident also stated that he has reached the place of occurrence at 7.00 A.M. and seen from his own eyes that Sk. Abu Saleh and Khokon Mallick touched the breasts of the complainant and blouse of the complainant was torn.
- 12.** P.W.3 is the doctor who has examined the victim/complainant and submitted that on 14th October, 1993 at 10.50 A.M., he has examined P.W.1 and found tenderness over both the breasts which might be

caused due to assault by blow and molestation. The injury report is marked as Exhibit-1 and the injury no.3 is corroborating the evidence of P.W.1, P.W.2 and P.W.3. During evidence of the doctor being P.W.3 has further stated that during the examination of P.W.1, she has stated to the doctor that Sk. Abu Saleh and Khokon Mallick have assaulted and molested her.

13. During cross-examination of doctor, the defense advocate has not even denied the injury on the breast of P.W.1 and no suggestion was given either to P.W.1 or to the doctor. The only suggestion which the defense advocate has put to the witness during cross-examination that the said injury is self-inflicted, though the P.W.1 has denied the same.
14. Taking into consideration of the evidence of P.W.1, P.W.2 and P.W.3, this Court finds that the Learned Magistrate has rightly come to the conclusion that the petitioner has committed an offence under Section 354 of the Indian Penal Code, 1860.
15. The Learned Trial Court has rightly convicted the petitioner for the offence under Section 354 of the Indian Penal Code, 1860. The Learned Appellate Court has already reduced the sentenced from 1 (one) year to 6 (six) months, thus this Court did not find any illegality or perversity in the impugned judgments passed by the Learned Judicial Magistrate and the Learned Appellate Court.
16. **C.R.R. No. 3957 of 2005 is dismissed.** The petitioner is directed to surrender before the Trial Court within a week from date to serve the

sentence as modified by the Learned Appellate Court and if the petitioner failed to surrender within the aforesaid period, the Learned Judicial Magistrate is directed to take appropriate steps against the convict.

- 17.** The department is directed to forward the copy of this judgment to the Learned Trial Court for information and necessary action.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)