


MHBU010006472024 	Received on	20.05.2024
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	Decided on	10.03.2026
	Duration	Ys Ms Ds 01 09 10

IN THE COURT OF ADDITIONAL SESSIONS JUDGE AT BULDHANA
(Presided over by **Shaikh Akbar Shaikh Jafar**)

Criminal Appeal No.14/2024

Exh.No. 8

Kailas Dnyaneshwar Khedekar, }
Age-32 years, Occ.Labour, }
R/o Palaskhed Bhat, Tq. and } ... **Appellant**
Dist.Buldhana } **[Accused]**

..Versus..

State of Maharashtra, }
Through D.GP and P.P. Buldhana, } ... **Respondent**
For PSO Raipur, } **[Prosecution]**

Appearances:

Shri S.R.Sonakar, Advocate for Appellant,
Shri S.M.Khatri, APP for Respondent /State

JUDGMENT

(Delivered on this 10th day of March 2026)

1] Challenge in this appeal is to the Judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, Chikhli in SCC No.1084/2022 dated 13.5.2024, thereby convicted the appellant/accused.

2] It is the case of prosecution that on 26.5.2022 at about 12.30 hours on bus-stand of Palaskhed Bhat, accused was found

driving his motorcycle bearing No. MH-28-BE-3049 under the influence of liquor.

3] Police have registered Crime No.121/2022 for the offences punishable under Section 185 and 177 along with Section 3/181 of the Motor Vehicle Act and then filed Istegasha before learned trial Court.

4] The learned trial Court recorded plea of accused, to which he pleaded not guilty and claimed to be tried. After recording the evidence of prosecution witnesses, the statements of accused under Section 313 of Code of Criminal Procedure was recorded. After hearing the learned A.P.P and learned Counsel of accused at length, the learned Magistrate acquitted accused/appellant of the offence punishable under Section 3/181 of M.V.Act. However, found him guilty for the offence punishable under Section 185 of M.V.Act and sentenced him to suffer imprisonment of One Month and to pay fine Rs.10,000/-, in default to suffer S.I.for 15 days.

5] Having displeased with the order of conviction, the accused/appellant preferred the appeal under Section 374 of the Criminal Procedure Code contending that there was no medical evidence on record against him. But, the learned Magistrate did not appreciate the facts and law properly. It is contention of the appellant/accused that, learned Magistrate erred in holding accused guilty for alleged offence. Lastly, he prayed to set aside the order of conviction and to acquit accused for the offences charged against him.

6] Having regard to the case of prosecution, contention of appellant and the defence of accused raised during the trial, following points arose for my determination and I have recorded my reasons as under;

SR. NO.	POINTS	FINDINGS
1]	Does prosecution prove that on 26.5.2022 at about 12.30 hours on busstand of Palaskhed Bhat, accused was found driving his motorcycle bearing No. MH-28-BE-3049 under the influence of liquor, and thereby committed an offence punishable under Section 185 of the Motor Vehicles Act ?	In the negative.
2]	Whether impugned judgment is just, legal and proper ?	In the negative.
3]	Whether interference needs to be done in impugned judgment?	In the affirmative.
4]	What order ?	As per final order.

REASONS

7] I have heard learned Counsel Shri Sonalkar for appellant and learned APP Shri Khatri for respondent.

AS TO POINT NO.1-

8] It reveals from the record and proceedings of learned trial Court that the prosecution examined in all two police witnesses. Both are stating that on 26.5.2022 at about 12.30 hours at Palaskhed Fata, when PW 1 and PW 2 were on traffic control

duty, they found that accused was coming riding on motorcycle in zigzag manner, on their gesture to stop, the accused stopped his vehicle and they found that he was unable to walk properly, was smelling like consuming liquor. Therefore, they prepared panchnama in presence of panchas and sent the accused for medical examination. PW 1 Anand Pawar lodged the complaint against accused, which resulted into registration of crime bearing No. 121/2022. After due registration, charge-sheet came to be filed against the accused. The prime allegation against accused appears to be regarding consumption of liquor which is an offence punishable under Section 185 of the M.V.Act.

9] In this regard, I am enlightened by the judgment passed by Hon'ble Bombay High Court in case of **Mr.Nikhil Wagale & Ors Vs. State of Maharashtra, reported in 2016 (1) ALL MR 862**. In the cited case, while dealing with the issue of drunken driving, the Hon'ble Bombay High Court has followed the judgment passed by Hon'ble Supreme Court in the case of **State Vs. Sanjiv Nanda, reported in 2012 (8) SCC 450**. It is opined at para No.6 that on plain reading of Section 185 of Motor Vehicle Act, the offence of driving by drunken person is established when in his blood, alcohol exceeding 30 mg per 100 ml of blood is detected in his breath test. The proviso of sub-Section (1) thereto lays down that the breath test shall be taken as soon as reasonably practicable after commission of such offence where motor vehicle is involved in a public place. Thus, the conduct of a proper breath test, at the proper time is of great deal of importance. In the instant case, no breath

test has taken. So also, it appears that the medical examination of the accused was not carried out as per the provisions of Prohibition Act and no blood test was carried out.

10] The prosecution is basically relying on the medical examination report vide Exh.13. On perusal of the same, it reveals that the Doctor concerned has not collected the blood sample so as to establish that the alcohol was found in the blood of accused. It is pertinent to note that the prosecution did not examine the Doctor who conducted the medical examination of the accused so as to prove the report at Exh.13 which appears to be regarding the appearance of the accused. It is to note that as per the complainant PW 1 Anand Pawar, he found accused under the influence of liquor and prepared the panchnama. But, the prosecution has failed to examine any panch witness so as to prove the appearance of accused on the spot. Most importantly, the prosecution did not examine Investigating Officer Rushikesh Palwe.

11] I am of the view that to prove the offence under Section 185 of M.V.Act, strict proof of the act and violation is necessary and that has to be proved either by breath test or by blood test. In absence of any C.A.Report regarding blood test, it cannot be said that the accused has violated the provisions of Section 185 of the M.V.Act. Thus, to me, prosecution has failed to establish that accused was found driving the motorcycle under the influence of liquor. Hence, I answer point No.1 in the negative.

AS TO POINTS NO. 2 & 3-

12] In view of my negative finding to point No.1, I am of the view that learned trial Court has not considered the evidence properly and erred in holding accused guilty for the offence punishable under Section 185 of M.V.Act. Consequently, judgment and order passed by learned trial Court needs interference and accused is entitled to be acquitted from the said offence. Accordingly, point No.2 is answered in the negative and point No.3 is answered in the affirmative. In the result, I proceed to pass the following order.

ORDER

- 1] Appeal is allowed.
- 2] The impugned Judgment and order passed by learned Judicial Magistrate, First Class, Chikhli in SCC No.1084/2022 dated 13.5.2024 is hereby set aside.
- 3] Accused is acquitted of the offence punishable under Section 185 of the Motor Vehicles Act.
- 4] Fine amount of Rs.10,000/- deposited in the Court by the accused be returned to him, after appeal period is over.
- 5] The accused to furnish bail as per Section 437-A of Cr.PC.
- 6] Inform to the learned trial Court accordingly.
- 7] Record and proceedings be sent back to the trial Court.

Buldhana
Date:10.3.2026

(Shaikh Akbar Shaikh Jafar)
Additional Sessions Judge,
Buldhana