

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1518 OF 2013

The State of Maharashtra **....Applicant.**

Versus

Anil Kashinath Hire and Ors. **....Respondents.**

Mr. V.D. Godbharle, APP for State/applicant.
Mr. A.N. Patil h/f. Mr. S.P. Chapalgaonkar, Advocate for
respondent Nos. 3 and 5.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 26th March, 2015.

ORDER :

1. The application is filed for granting leave to file appeal against judgment and order of acquittal given by the learned Additional Sessions Judge, Kopergaon in Sessions Case No. 35/2011. The learned APP is heard. The learned counsel appearing for respondent Nos. 3 and 5 is also heard. This Court has perused the original record.

2. Though it can be said that the record of identification of the accused like Santosh Waykar, Rahul Sonawane and Anil Hire may not be that convincing, but the circumstance remains that the stolen property is recovered from these persons. Some stolen property is recovered from Anil Hire and some stolen property is recovered from Santosh and Rahul on the basis of

their statements given under section 27 of Evidence Act. There is evidence of panch witness and there is evidence of Investigating Officer also. The Trial Court has not believed the panch witness by holding that he is habitual panch witness, but there is evidence of Investigating Officer and there is the fact that the stolen property is recovered and the stolen property is identified by the witnesses. In view of these circumstances, this Court holds that there is arguable case as against accused Nos. 1, 3 and 4 viz. present respondent Nos. 1, 3 and 4. To that extent, this Court holds that permission needs to be granted to file appeal.

3. But, it appears that accused No. 1 Anil Hire is dead and so, the matter is abated as against respondent No. 1 Anil Hire and so permission is granted to file appeal against respondent Nos. 3 and 4 viz. Rahul Sonawane and Santosh Waykar. The application is rejected in respect of respondent Nos. 2 and 5 viz. Rajendra Aher and Anurag Yeola.

4. Appeal is **admitted**. Comply the provisions of section 390 of Cr.P.C. as against respondent Nos. 3 and 4 only.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

SSC/