

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3072 OF 2014

The State of Maharashtra, through
Sunil Harishchandra Mali,
Age 39 years, occ. Police Naik
B. No.594, Police Station,
Kallam, Dist. Osmanabad ..Applicant

Versus

Bhima Shripati Hausalmal
and others ..Respondents

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Mr.V.P.Kadam, APP for applicant - State

Mr.M.S.Patil, advocate for respondents

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CORAM : M.T. JOSHI, J.

DATE : SEPTEMBER 14, 2015

PER COURT :

Heard both sides.

2] Present respondents have been acquitted by learned Addl. Sessions Judge, Osmanabad from offences punishable under Section 147, 148, 333, 353, 336, 337, 504 and 506 read with 149 of Indian Penal Code; Section 3(e) of Prevention of Damage to Public Property Act, 1984; and Section 110 read

with 117 and Section 135 of Bombay Police Act. The State wants to file appeal against the said judgment and order and hence, present application is preferred for grant of leave to file the appeal.

3] The prosecution case would show that on the new year's day i.e. between the night of 31st December, 2009 and 1st January, 2010 at 1:00 a.m., while the police party was patrolling, present respondents along with a mob had pelted stones towards the police jeep causing damage to the jeep as well as injury to police personnel.

4] Before learned Addl. Sessions Judge, besides PW 3 – Sunil Mali – the injured Police Constable, Medical Officers were examined. PW 4 – Ganesh Patil was examined to corroborate the prosecution case.

5] Learned Addl. Sessions Judge has acquitted the respondents, principally on the ground that there was no evidence on record to establish that there was arrangement of light on the spot. Further, as per PW 3 - Sunil, total 24 persons were pelting stones and there is no evidence as to overt act of any of the accused though other witnesses have deposed about their role.

6] Learned A.P.P. for appellant - State submits that the spot of occurrence is a square namely 'Shivaji Square' in the Tahsil town Kallam. It is the prosecution case that stones were pelted towards the jeep meaning thereby, the jeep had headlights and there is no necessity to explain about arrangement of light at the spot. He submits that the injuries are corroborated by the Medical evidence.

7] Learned counsel for the respondents opposes the application. He submits that learned Addl. Sessions Judge has taken a reasonable and probable view of the matter and the application may be rejected.

8] Upon hearing both sides, in my view, an arguable case is made out. In the circumstances, leave to file appeal is hereby granted. Present application is allowed.

[M.T. JOSHI, J.]

kbp

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Heard.

2] Appeal be registered as per due process of law. Upon registration, Mr.Patil, learned counsel waives notice for the respondents. Keep for admission on 28th September, 2015.

[M.T. JOSHI, J.]

kbp