

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No.258 Of 2001.

Hafizoddin s/o Niyajoddin.
Age : 36 Years., Occ.: Service.
R/o.: Parasnagar, Nanded.
Dist. Nanded.

:: Applicant.

Versus

- (1) The State of Maharashtra.
Through Police Station, Shivaji Nagar,
Nanded, Dist. Nanded.
- (2) Sk. Sardar Sk. Bablu.
Age : 31 Years.,
- (3) Sk. Bablu Sk. Babu.
Age : 28 Years.,
- (4) Mirza Mohseen Ali Baig Habib.
Age : 58 Years.,
- (5) Sk. Farooq Shaikh Babu.
Age : 30 Years.,
- (6) Sk. Naeem Pasha s/o Sk. Gani.
Age : 29 Years.,

All R/o.: Lalwadi, Nanded.
Dist. Nanded.

:: Non Applicants.

Appearance ==>

Mr. Nitin Chaudhary, Advocate for the Applicant.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra
/ Non-Applicant No.1.

Mr. G.D. Kale, Advocate for Non-Applicant No.5.

CORAM : V.M. DESHPANDE, J.

DATE : 5th MARCH, 2015.

J U D G M E N T :-

On 29th January, 2003 this Court [Coram : N.V. Dabholkar, J.] issued notice to the Non-Applicants in the present case and order dated 25th June, 2003 passed by this court [Coram : P.B. Gaikwad, J.] shows that, matter be kept for final hearing in due course. It appears that, formal order of Rule was not given on the said date. Hence, “Rule”. Rule made returnable forthwith. Heard finally, with consent of both the parties.

[2] Present Criminal Revision Application is directed against the Judgment and Order dated 14th June, 2001 passed by the learned Additional Sessions Judge, Nanded in Criminal Appeal No.50 Of 1998 preferred by present Non-Applicant Nos. 2 to 6, by which the learned lower appellate court allowed the Appeal preferred on their behalf and set aside the Judgment and Order of conviction and sentence passed against them on dated 2nd July, 1998 by the learned Chief Judicial Magistrate, Nanded in Regular Criminal Case No.1087 Of 1993.

[3] I have heard Mr. Nitin Chaudhary, Advocate for the Applicant in extenso. I have also heard Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra / Non-Applicant No.1 and Mr. G.D. Kale, Advocate for Non-Applicant No.5.

[4] Mr. Nitin Chaudhary, learned counsel vehemently urged before this court that the learned lower appellate court has committed serious mistake in upsetting the well reasoned order of conviction passed by the learned trial court. He submitted that, voluminous evidence is available on record and, therefore, the appellate court has committed mistake in acquitting them.

[5] Though Regular Criminal Case No.1087/1993 was the State case, the State chose not to prefer any Appeal against the Judgment and Order of acquittal against Non-Applicant Nos.2 to 6 and it is the first informant, who has approached before this Court by filing Criminal Revision Application against the Judgment and Order of acquittal passed by the learned Additional Sessions Judge, Nanded in Criminal Appeal No.50/1998.

[6] The First Information Report is at Exhibit - 42. It is filed by the applicant. Charge was framed in Regular Criminal Case No.1087 Of 1993 against in all seven accused persons including Non-Applicant Nos.2 to 6. During the trial, original accused No.4 Shaikh Farooque s/o Shaikh Chinu-Miya died, therefore, trial was abated against him.

[7] Vide charge Exhibit - 26, on 22nd November, 1995, Non-Applicant Nos. 2 to 6 and another, were charged that on 17th November, 1993 at 17/30 p.m. at Lalwadi, Nanded they formed an unlawful assembly and in prosecution of the common object of that assembly, they caused hurt to the applicant – First Informant. That time, they were armed with deadly weapons like sticks and, thereby, they committed an offences punishable under Section/s 147, 148, 149, of the Indian Penal Code. They were also charged that in furtherance of their common intention they voluntarily caused hurt to Hafizoddin s/o Niyajoddin and, thereby committed an offence punishable under Section 323 read with 34 of the Indian Penal Code and also under Section 324 read with 34 of the Indian Penal Code.

[8] In order to bring home the guilt, the prosecution has examined in all nine witnesses. The learned Chief Judicial Magistrate, Nanded on 2nd July, 1998 acquitted original accused Nos. 7 and 8 however, convicted present Non-Applicant Nos. 2 to 4 for the offences punishable under Section/s 147, 148, 149, 323, 324 read with 34 of the Indian Penal Code and directed them to suffer

simple imprisonment till rising of the court and to pay fine of Rs.2000/- each on all counts and in default of payment of fine, to suffer simple imprisonment for one month.

[9] The State did not prefer any Appeal for enhancement of sentence. Non-Applicant Nos. 2 to 6 preferred Criminal Appeal No.50 Of 1998 which was allowed by the learned lower appellate court.

[10] In my view, the learned lower appellate court has rightly observed that, when charge under Section 149 of the Indian Penal Code was framed; it was beyond comprehension that there can be conviction for Section 149 read with 34 of the Indian Penal Code.

[11] From the charge, it is crystal clear that the accused were charged for committing an assault and causing injury to first informant / present applicant. The lower appellate court, therefore, in my view has correctly recorded the findings that evidence of Dr. Dilip Govindrao Mhaisekar (PW No.7) is of no use to the prosecution in as much as, he has proved the injury received by Abdul Ajaj and two other witnesses, for which none of Non-Applicant Nos. 2 to 6 faced the charge.

[12] Further, though PW No.8 Devidas Pandharinath Joshi, Investigating Officer has proved the seizure panchnama Exhibit – 64, his evidence is totally silent that the accused gave memorandum statement in presence of panchas. In that view of the matter, it cannot be a statement under Section 27 of the Indian Evidence Act.

[13] Further independent panch witness has not supported the case of the prosecution. The learned lower appellate court being final court in so far as finding of the fact is concerned, has correctly reached to the conclusion that the prosecution evidence is not cogent and consistent and falls short to bring home

the guilt of present Non-Applicants, as author for the injury suffered by the applicant, especially when the court below found that, prosecution has not proved its case in response to non seizure of stick and iron bar etc. One stick, which was seized, as observed above has also found to be not properly established by the prosecution.

[14] The scope of revision against acquittal is limited. The learned counsel was unable to point out any perversity or any error, which is apparent on the face of record, warranting interference in the revisional jurisdiction. In that view of the matter, I see no reason to differ the reasons supplemented by the learned Additional Sessions Judge, Nanded while acquitting the Non-Applicants hence, there is no merit in the Criminal Revision Application and same fails and is dismissed, accordingly. Rule is discharged.

(V.M. DESHPANDE, J.)