

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

Criminal Revision Application No.99 Of 2002.

Ishwar Avghadrao Patil

Age.: 30 Years., Occ.: Agriculturist.

R/o.: Nadgaon, Tal. Bodhwan,

Dist. Jalna.

:: **Applicant.**

Versus.

(1) Pandit Samrit Gaikwad.

Age : 57 Years., Occ.: Agriculturist.

(2) Devkabai Pandit Gaikwad

Age : 42 Years., Occ.: Household.

Both R/o.: Nadgaon, Tal. Bodhwan,

Dist. Jalna.

::

(3) The State of Maharashtra.

:: **Non Applicants.**

(Resp.Nos.1&2 are original
Accused Nos.1&2.)

Appearance ==>

Mr. Arun Rakh, Advocate h/for Mr. G.V. Wani, Advocate for the Applicant.

Mr. Gopal Nawandar, Advocate for Non-Applicant Nos.1 & 2.

Mr. V.P. Kadam, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 22nd JANUARY, 2015.

ORAL JUDGMENT :-

Heard Mr. Arun Rakh, learned counsel for the Applicant, Mr. Gopal Nawandar, learned counsel for Non-Applicant Nos.1 & 2 and Mr. V.P. Kadam, learned Additional Public Prosecutor for the State of Maharashtra. With the able assistance of respective learned counsel, I have gone through the Record & Proceedings.

[2] Challenge in the present Criminal Revision Application is the Judgment and Order of acquittal passed by the learned Judicial Magistrate, First Class, Bhusawal, Dist. Jalgaon dated 7th February, 2002 passed in Summary Criminal Case No.1144/2000, by which the learned Judge of the court below was pleased to acquit Non-Applicant Nos.1 & 2 for the offences punishable under Section.s. 341, 504, 506 read with 34 of the Indian Penal Code.

[3] According to the learned counsel for the applicant / First Informant, the learned court below has committed mistake in acquitting Non-Applicant Nos.1 & 2, though there is ample evidence available on record to convict them, for the alleged offences. He submitted that if evidence of all the prosecution witnesses is examined in correct perspective; then it is clear that only irresistible conclusion that has to be drawn is the conviction of Non-Applicant Nos.1 & 2.

Per contra, Mr. Gopal Nawandar, learned counsel for Non-Applicant Nos.1 & 2 supported the judgment of acquittal and prays for dismissal of present Criminal Revision Application.

[4] Though Non-Applicant Nos.1 & 2 were prosecuted in a State case, upon their acquittal, the State chose not to prefer Appeal against such acquittal and it is the First Informant, who has filed present Criminal Revision Application.

[5] First Information Report is at Exhibit - 17. According to the F.I.R., First Informant is having agricultural field bearing Gat No.367 at village Kalhadi. He is having 1 Hectare 29 Are land in the said Gat Number. In the adjacent land Gat No.368 Pandit Samrit Gaikwad (present Non-Applicant No.1) is having his own agricultural field. He has purchased the same, in the year 1988-89. It is further stated in the First Information Report that there was obstruction for the right of way. On 10th July, 2000 at 11.30 a.m. when First Informant was near to the boundary of agricultural field of accused Pandit, he found that the way was obstructed by putting thorny bushes. It is further alleged that on the same day, Pandit and his wife Devkabai started abusing him and gave threat to face the dire consequences.

[6] On the basis of report lodged by the First Informant, C.R. No. 25/2000 was registered with Police Station, Bodhwad against Non-Applicant Nos. 1 and 2 for the offence punishable under Sections 341, 504, 506 read with 34 of the Indian Penal Code.

[7] During the course of trial, in all five witnesses were examined by the prosecution. The learned Magistrate on evaluation of the evidence, found that prosecution has failed to prove the case against present Non-Applicant Nos. 1 and 2 and, therefore, order of acquittal has been passed.

Pertinent to note the fact that, though the date of incident is 10th July, 2000 First Information Report was lodged on 15th July, 2000 thus, there is delay of long five days. Delay is not at all explained by the prosecution.

[8] Though on the basis of the cross-examination of the Investigating Officer, it was tried to canvass that complaint was lodged on the date of the incident itself, perusal of Exhibit – 17 clearly shows that there is over writing. Said fact is also admitted by the Investigating Officer in his cross-examination. Further the prosecution has failed to prove that though F.I.R. was given on the date of occurrence itself, it was kept under the caption “enquiry” and only after the “enquiry”, offence was registered. In that view of the matter, it is absolutely clear that prosecution has completely failed to give proper explanation about the delay caused. There is long delay of five days, which fatal to the prosecution case. This aspect has correctly assessed by the learned Judge of the court below and recorded findings in that behalf.

[9] Further from the evidence of PW No.1 Sanjay, it is clear that the accused persons purchased the land from his uncle. Even from the First Information Report also it is clear that land was purchase by Non Applicant Nos. 1 and 2 in the year 1988-89. The dispute is in respect of the right of the way. PW No.1 – Sanjay who is also having share in the same Gat Number in which the accused had purchased the share of his uncle. He deposed from the witness-box when he was under cross examination that :-

“ It is true that there is no way from the field of the accused to reach to the land of Awghad Guruji”.

There is no dispute that this Awghad Guruji is father of present applicant.

In that behalf, admission given by the first informant, who was examined as PW No.2 is worth to refer, he has stated as under :-

“It is true, we are in strained relations with the accused since he has purchased said adjacent land”.

Therefore, it is clear that since adjacent land was purchase by present Non Applicant Nos. 1 and 2, there is possibility of false implication at the behest of present applicant.

[10] Further there is no independent evidence appearing in the prosecution case to corroborate the version of first informant. The prosecution has examined PW No.3 - Rambhau Vyavahare and seeks corroboration through him to the version of the First Informant. However, from the evidence of first informant – Ishwar, it is clear that this witness Rambhau is monthly employee of first informant. Therefore, it is clear that, this witness being under the thumb of the first informant, is a partisan witness.

[11] Another witness is PW No.5 - Anil Ganpat Pol. However his presence on the spot, though he claims as such, itself is doubtful if his evidence is perused minutely. From his evidence, it is clear that he is working as Peon at K.G. Patil High School, Nandgaon and spot of incident is about 2 K.M. away from the said school. From his evidence, it is clear that upon information, he proceeded towards the spot of occurrence; since he was called by the elder brother of first informant. Firstly, elder brother of Ishwar is not at all examined before the Court. Further it is not case of the prosecution that incident is lasted for long period or duration. To travel 2 K.M. distance, PW No.5 - Anil must have taken some time. Therefore, it is clear that he cannot be witness to the occurrence.

[12] Merely because the another view is possible that itself is not sufficient to upset the well reasoned judgment and findings of acquittal, which was passed on evaluation of the prosecution case. In that view of the matter, Criminal Revision Application fail. It is dismissed accordingly.

Criminal Revision Application dismissed.

(V.M. DESHPANDE, J.)