

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

CRIMINAL APPLICATION NO. 3560 OF 2014

Mohammed Ghouse Mohammed Nawaz**Applicant**

Versus

Anandrao s/o. Madhavrao Deshpande
and Ors.

....**Respondents.**

Mrs. A.N. Ansari, Advocate for applicant.

Mrs. R.K. Ladda, APP for State.

Mr. Y.R. Barhate, Advocate for respondent Nos. 1 and 3.

CORAM : T.V. NALAWADE, J.

DATED : 17th June, 2015.

ORDER :

1. The application is filed to challenge the order made by the learned Judicial Magistrate, First Class, Mukhed in RCC No. 163/2013 on 3.5.2014 and also for quashing and setting aside the decision given by Sessions Court in Criminal Revision No. 21/2013. Both the sides are heard.

2. O.M.A. No. 19/2013 was filed by present petitioner for taking action against the respondents for commission of offences punishable under sections 181, 182, 447, 420, 34 of I.P.C. He has made allegations that the predecessor, ancestors of the accused, had given 2.5 Gunta land to Muslim community for

graveyard. It is contended that out of this portion, the portion of 33 ft. x 33 ft. is given by accused No. 1 to accused Nos. 2 to 4 under the agreement and they have made encroachment over this portion. It is contended that due to this activity, tension is created in the village. On the basis of verification, the learned J.M.F.C. issued process for offences punishable under section 181 and 182 of I.P.C. This order was challenged by one of the accused namely Anandrao Madhavrao Deshpande and the Sessions Court set aside the order of issue process made by J.M.F.C. by observing that for taking cognizance of the matter filed under sections 181 and 182 of I.P.C. the procedure as given under section 195 of Cr.P.C. needs to be followed.

3. Even if the allegations are read and accepted as they are, they do not constitute the offences under sections 181 and 182 of I.P.C. The learned J.M.F.C. had not applied mind while issuing process and the learned Judge of the Sessions Court has not committed any error in setting aside the order, though the ground is different.

4. The learned counsel for the applicant has one more grievance that the J.M.F.C. has dropped the proceeding against all the accused when only one accused had got the relief in

Sessions Court. In view of the facts and circumstances of the case, this Court holds that the parity can be applied in favour of other accused also and the learned J.M.F.C. has not committed any error. No merits are found in the present proceeding.

5. In the result, the application is dismissed.

[T.V. NALAWADE, J.]

ssc/