

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.3604 of 2013

The State of Maharashtra.

.. Applicant.

Versus

Rangnath Bhikaji Hole & Others.

.. Respondents.

Shri. S.A. Ambad, Additional Public Prosecutor, for
applicant.

CORAM: T.V. NALAWADE, J.

DATE : 22nd JULY 2015

ORDER:

1) The application is filed for grant of leave to file appeal against the judgment and order of Sessions Case No.42/2007 which was pending in the Court of Additional Sessions Judge Shrirampur, District Ahmednagar. Heard learned Additional Public Prosecutor. This Court has gone through the judgment delivered by the trial Court.

2) The material considered by the trial Court shows that son of accused No.1 has purchased share of

uncle of the complainant (PW 1) from agricultural land bearing Gat No.12. The complainant has contended that he has right to go through the land of accused No.1, use some portion as cart way but the accused No.1 is not allowing him to use said cart way. The complainant has made application to the Tahsildar. On the other hand, accused had filed a civil suit to prevent the complainant from entering the land of the accused.

3) When the aforesaid application and the civil suit were pending before the Tahsildar and the Civil Court, on 1-2-2007 the complainant entered the land of the accused. According to him the accused were digging the disputed way for soak pit and when he questioned the accused, he was man handled by the accused and he was tied to a pole by using an irrigation pipe. He was assaulted by using handle of agriculture implements. Some other allegations are made that accused had urinated in his mouth. Allegations are made that somehow the complainant rescued himself and then he went to Municipal Hospital. According to him, before he went to the hospital he had disclosed the incident to one witness.

Then he went to Sakhar Kamgar Hospital, Shrirampur and there he was admitted till 6-2-2007. One doctor from this hospital is examined to prove the injury which was found on the person of the complainant.

4) When the incident took place on 1-2-2007 at 10.00 a.m. the FIR was given on 3-2-2007. The statements of the witnesses are also recorded belatedly. The medical evidence shows that only tenderness was found over right side of back, right knee, right wrist and occipital region. The age of the injury was not mentioned and it appears that there was no visible injury as such even contusion or abrasion on the person of the complainant. When he was treated in the Municipal Hospital immediately after the incident, MLC which must have been prepared by the Municipal Hospital was not produced and the record of the aforesaid private hospital was produced and the doctor who treated was examined.

5) The evidence discussed by the trial Court shows that there are two rival groups in the Village Panchayat. Against the complainant application was

given to the Collector for termination of membership of the Village Panchayat as he had remained absent and his membership was terminated. In addition to this dispute there was dispute for use of the aforesaid land as cart way which allegedly passes through the land of accused No.1.

6) The trial Court has also discussed the case about the spot of the incident. There is no convincing evidence to show that the spot was in public view when a road is situated at quite some distance from the field when there were standing crops of sugar cane in the fields at the relevant time and by the road side there were Neem trees.

7) The complainant is M.A., B.Ed. and he was member of the Village Panchayat. In spite of that, he gave FIR late. It appears that one accused was also injured and he sustained serious injuries. It can be said that some incident did take place but not as contended by the complainant. However in view of the aforesaid circumstances and the nature of evidence of the complainant the trial Court acquitted the accused. The

trial Court has given benefit of doubt to the accused. This Court holds that nothing can be achieved by granting leave to the State to file appeal. In the result, the application is rejected. Leave is refused.

Sd/-
(T.V. NALAWADE, J.)

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