

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

Criminal Revision Application No. 101 of 2003

Sadashiv Vishwanath Chabharkar,
Age : 25 years,
Occupation : Agriculture,
R/o. Chabara, Taluka : Hadgaon,
District : Nanded.

.. Revision Applicant.

versus

1. Ganpati s/o. Vithal Kalyankar,
Age : 50 years.
2. Shankar s/o. Vithal Kalyankar,
Age : 36 years.
3. Baliram s/o. Vithal Kalyankar,
Age : 45 years.
4. Suryabhan Tukaram Kalyankar,
Age : 55 years.
5. Pratap s/o. Ganpati Kalyankar,
Age : 28 years.
6. Sunil s/o. Ganpati Kalyankar,
Age : 22 years.

All Occupation : Agriculture,
R/o. Chabhara, Taluka : Hadgaon,
District : Nanded.

7. The State of Maharashtra,
Through Police Station, Mantha,
Taluka : Hadgaon,
District : Nanded.

.. Respondents.

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*Smt. Surekha Biradar, Advocate, holding for
Smt. R.D. Reddy, Advocate, for the revision applicant.*

*Mr. Ashwin V. Sakolkar, Advocate, holding for
Mr. V.G. Sakolkar, Advocate, for respondent
nos.1 to 6.*

*Mr. S.D. Kaldate, Additional Public Prosecutor,
for respondent no.7 - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 19TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Smt. Surekha Biradar h/f. Adv. Smt. R.D. Reddy for the revision applicant, Adv. Mr. A.V. Sakolkar h/f. Adv. Mr. V.G. Sakolkar for respondent nos.1 to 6, and learned APP Mr. S.D. Kaldate for respondent no.7 - State.
2. Being aggrieved by the judgment and order passed by the Judicial Magistrate (F.C.), Hadgaon, dated 16th December 2002, thereby acquitting the respondents, in Regular Criminal Case No. 169/1998, the original complainant has filed the present revision application challenging the said judgment and order of acquittal.
3. Such of the facts necessary for the decision of this revision are as follows :

The complainant and the accused persons were having adjacent agricultural land. There was a dispute between the complainant and the respondent in respect of common pathway as well as the boundary demarcating their respective lands. On 8-8-1998, the complainant and the respondents / original accused had called upon respectable persons from the village for settling the dispute regarding the pathway in Survey No. 21 of village Chabhara. After the meeting was convened, the complainant had removed the thorny fencing fixed by the accused persons for opening the pathway. It is alleged that the present respondents / original accused being annoyed with the action of the complainant, had initiated an altercation. They had abused and raised quarrel with the complainant party. The verbal altercation between both the groups had become violent. It is alleged that the present respondents / original accused had pelted stones towards the complainant party. It prima facie appears that members of both the groups were injured. The complainant as well as the respondents / original accused had filed cross complaints in respect of the same incident. On the basis of the report of the complainant Sadashiv s/o. Vishwanath Chabharkar, Crime No. 51/1998 was registered at Mantha Police Station, against the respondents / original accused for the offences punishable under Sections 143, 147, 148, 149, 324, 337, 323 of the Indian Penal Code, and Section 135 of the Bombay Police Act. After completion of investigation, charge sheet was filed and the case was registered as Regular Criminal Case No. 169/1998. The prosecution examined as many as 11 witnesses to bring home the guilt of the accused.

4. The learned Judicial Magistrate (F.C.) has rightly observed that the accused persons were in their own agricultural land and were

present at the scene of offence by virtue of the fact that they had convened a meeting of respectable persons of the village in order to settle the dispute. All the accused persons are members of the same family and, therefore, the learned Magistrate has rightly considered that they had not formed an unlawful assembly or that any of the accused persons was a member of the unlawful assembly. That, the incident had occurred on the spur of the moment. It cannot be said that the accused persons had shared a common object to assault the injured witnesses. In view of this, the observations made by the learned Magistrate do not call for any interference.

5. The learned Magistrate has assigned sound and justifiable reasons for recording acquittal in favour of the respondents / original accused which does not warrant any interference. The learned Counsel for the respondents / original accused submits that the case was arising out of a cross complaint. The applicant herein and the co-accused of the applicant were acquitted of the charges levelled against them. In view of this, no interference is called for.

6. In the result, the Revision Application is dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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