

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

**CRIMINAL APPLICATION NO. 5147 OF 2015**

The State of Maharashtra,  
Through : Police Station,  
Jawahar Nagar,  
Aurangabad

.. Applicant  
(Orig. Complainant)

VERSUS

1] Jyotiram Shrirang Waghmare  
Age : 43 years, Occu.: Driving,  
R/o. Munshi Plot, Omerga,  
Dist. Osmanabad  
At present R/o S.T. Depot  
Mukundwadi, Aurangabad

2] Narayan Shankarrao Avhad,  
Age : 56 years, Occu.: Service,  
R/o. Plot No. 12, Gajanan Colony,  
Near Floor Mill, Aurangabad

.. Respondents  
(Orig. Accused)

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Mr. S.D. Ghayal, A.P.P. for the applicant/State  
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**CORAM : M.T. JOSHI, J.**

**DATE : 10/12/2015**

**ORAL ORDER :**

Heard learned A.P.P.

2. Aggrieved by the acquittal of the respondents  
by the learned Judicial Magistrate First Class,  
Aurangabad vide judgment and order dated 15/05/2015

passed in S.C.C. NO. 3388 of 2012 from the offences punishable under section 279, 336, 338 r/w. 34 of the Indian Penal Code and section 184, 185 of the Motor Vehicles Act, the State wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

3. The reading of the findings of the learned Judicial Magistrate First Class would show that the victim of the offence is not examined and further the Medical Officer, who had examined the present respondent no.1, to find out as to whether he was driving the bus under the influence of liquor was also not examined, the acquittal came to be recorded.

4. Learned A.P.P. points that the prosecution in-fact has examined the Conductor of the said Bus i.e. PW3 - Neeta. Her evidence would show that she herself found the respondent no.1 behaving in disorderly manner and, therefore, she had even informed the Traffic Controller on duty. He however did not pay heed. Thereafter, on a busy road in Aurangabad at 8:30 am in the morning, the bus driven by the respondent suddenly went beyond the

road divider, causing the accident. She found that the bus had dashed to one motorcyclist. The learned A.P.P. therefore submits that the learned Judicial Magistrate First Class ought to have taken into consideration these facts.

5. Considering the material on record, in my view, an arguable case is made out. In the circumstances, leave to file appeal is hereby granted.

6. Application stands disposed of accordingly.

7. Appeal be registered as per due procedure of law.

**[M.T. JOSHI]**  
**JUDGE**

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