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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) No. 323 of 2013.

Amar Vinayak Mahadik

..Applicant.

Versus

Mallu Dhondiba Mane & Ors

..Respondents.

Mr Anand S. Patil, Advocate for the Applicant/Appellant.

Mrs P.P. Bhosale, APP for the State for Respondent No.17-State.

Mr Niranjan Mundargi, advocate for the respondent Nos. 1, 2, 4 to 14.

CORAM : A.R.JOSHI,J

DATE : 10th August, 2015

P.C. :

1) Heard rival submissions on this application for leave to file appeal challenging the acquittal of the accused Nos. 1 to 20 in the matter of offence u/s 447, 448, 427, 506 read with section 34 of IPC.

2) The impugned judgment and order was passed by JMFC, Kagal, District Kolhapur on 14.2.2013 in a private criminal complaint, bearing RCC No.92 of 1999. The said complaint was initially filed on 6.3.1995 and apparently was subsequently renumbered. The complaint was lodged by the present applicant/original complainant for taking action against the

respondents-accused for tres-pass on his immovable landed property and taking away of the goods and articles of his Video Parlour, which was being run on the said land which he purchased from original accused no.20. During the trial, accused no.20 died. So the case against him stood abated.

3) During the arguments, the learned counsel for the applicant stated that he had purchased the said immovable property, a land, admeasuring about 1.25 gunthas by a registered sale deed from original accused no.20. He also purchased one shed already constructed on the land under the same sale deed. Subsequently, he started a video parlour and was paying the taxes to the local Gram Panchayat. Respondent no.1 is the Gram Sevak of the said Gram Panchayat and some of the other respondents were the office bearers of Gram Panchayat and few others were residents of the said village and doing agriculture work. It is further argued that without any authority the respondents encroached on the property of the complainant and demolished the structure/shed and took away all the articles. It happened on 1.8.1993. The complainant immediately approached local police station but without any success and after about one year and seven months he lodged a private complaint.

4) Learned counsel for the respondents submitted that the trial court had properly appreciated the evidence, mainly emphasizing various contradictions in the substantive evidence of the prosecution witness and these contradictions are going to the root of the matter as to failure of the complainant to establish each and every singular act as against the respondents-accused. It is further

argued that respondent no.1 being a public servant, Gram Sevak, there was a bar for taking action against him in a Criminal Court, unless the previous sanction u/s 197 of Cr.P.C. would have been obtained by the complainant. That has not been done in the present matter, further argued.

5) This Court has gone through the reasonings given by the trial Court and substantive evidence produced before the Trial Court. It is found out that there was demolition notice issued by the Gram Panchayat dated 22nd July, 1993 to the original owner of the property i.e. original accused no.20, then alive. Copy of the notice was also sent to the present applicant/complainant. It was so done as by that time in the Gram Panchayat record the name of the present complainant/applicant was not entered as the owner of the property. It appears that the trial Court came to the conclusion that the ingredients of the offence levelled against the respondents accused were not established by cognate evidence. Moreover, the respondent original accused no.1 was acting in the capacity as an officer of the Gram Panchayat and acted on the notice of demolition. Considering the above factual position, in the opinion of this Court, there is nothing to re-agitate the matter again by allowing the applicant to challenge the order of acquittal.

6) In view of the above, the present application is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)