

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO. 243 OF 2015

Lahu Sopan Kasbe

... Applicant.
(Org.Accused)

V/s.

The State of Maharashtra

... Respondent.

Mr. Vikas B. Shivarkar, Advocate for the Applicant.

Mr. Rajesh More, A.P.P. for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 24th JUNE, 2015

P.C. :

1 Admit. Heard finally by consent of the parties.

2 The applicant has been convicted for the offence punishable under section 392 r/w. section 34 of the Indian Penal Code. The applicant was the driver of Truck No. MH/14 AS-5968 in which certain goods including cell phone were being transported on from Pune to Lonere. The complainant was sitting with him. While the Truck was on way to Lonere, it was overtaken by some other Truck and the occupants of the second Truck assaulted the complainant and the applicant and took away the goods from the Truck which was being driven by the applicant. An offence against the unknown persons was

registered. During the course of investigation, the complainant and the applicant both were interrogated.

3 It was the case of the prosecution before the trial court that the applicant disclosed the names of other accused while he was in the police custody. Other accused came to be arrested on the basis of the interrogation of the applicant. The goods were recovered at the instance of the other accused. Identification parade was also held in which the other accused are alleged to have been identified.

4 As far as the present applicant is concerned, the only evidence against him on which the learned Magistrate has relied upon is the statement made by the applicant in police custody, disclosing the names of the other accused. It appears that the learned Magistrate lacks elementary knowledge of the law of evidence and similar is the position with the learned appellate court Judge. It is very obvious that the applicant could not have been convicted on this material.

5 The revision application, therefore, needs to be allowed. Accordingly, the revision application is allowed.

6 The judgment and the orders of the learned Magistrate and the Appellate Court are set aside.

7 The applicant is acquitted of the offence punishable under section 392 r/w. Section 34 of the I.P.C.. The applicant shall be released from the prison forthwith, if not required in any other case.

(JUDGE)

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