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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALS) No. 95 of 2015

The State of Maharashtra ..Applicant.

Vs

Mahamad Rafiq Gulam Kureshi & Anr ..Respondents.

Mr A.R. Patil, APP for the Applicant/State.

CORAM : A.R.JOSHI,J

DATE : 15th September, 2015

P.C. :

1. Heard learned APP for the State on this application for leave to file appeal challenging the acquittal of the respondents in the matter of offences punishable under section 353 and 333 read with section 34 of IPC.

2. The case of the prosecution in nut-shell is that in the afternoon of 11th May,2009 the Traffic Controller of Karmala S.T. bus Depot was discharging his duty and at night time at about 10:00 p.m. he saw the crowd near the platform No.4 of the bus stand and he noticed present two respondents misbehaving under the influence of alcohol. He noticed that they were urinating in the open area of the S.T. bus stand. He objected the respondents for misbehaving. On this, they became annoyed and

assaulted the complainant by means of fist and kick blows. This incident was witnessed by the driver and the conductor of Nagar - Karmala bus. About 30 to 40 people had gathered there. Crime No. 120 of 2009 was registered against both the respondents-accused initially under section 353 read with section 34 of IPC.

3. What weighed with the trial court was non conducting of the test identification parade of both the respondents accused though they were strangers to the prosecution witnesses and apparently respondent no.2/original accused no.2 was arrested after about one month of the incident and apparently there is nothing on record as to when respondent-accused no.1 was arrested.

4. From the above, the another factual position weighed with the trial Court as to non-production of the medical papers and the description of the injuries given by the Medical Officer PW no.6 as "grievous" which was only the contusion over the left ear and another injury was blunt trauma all over the body of the complainant. Also what weighed with the trial Court was non-examination of the independent witnesses. Apparently, there was huge mob gathered at the time of the incident.

5. Considering the substantive evidence of the prosecution witnesses and considering main thing i.e. non conducting of the test identification parade and arrest of accused no.2 after one month, in the opinion of this

Court, it cannot be said that the order of the trial Court is of such a perverse nature so as to be interfered with by allowing the State to prefer an appeal.

6. In the result, there is no substance in the application for leave to prefer appeal and same is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.