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

CRIMINAL REVISION APPLICATION (ST.) NO. 41 OF 2015

The State of Maharashtra,
Police Station Himayatnagar,
Dist. Nanded

..APPLICANT

VERSUS

1. Vikas s/o Deorao Devsarkar,
Age: 28 years, Occu: Agri.,
R/o Village Siranjani,
Tq. Himayatnagar, Dist. Nanded,

2. Dinesh s/o Devrao Devsarkar,
Age: 32 years, Occu: Agri.,
R/o Siranjani, Tq. Himayatnagar,
At present Village Ekamba,
Tq. Himayatnagar, Dist. Nanded

..RESPONDENTS

Mr R. V. Dasalkar, Addl. Public Prosecutor for applicant;
Mr R. B. Narwade Patil, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 29th September, 2016

ORAL ORDER :

Heard learned Addl. Public Prosecutor.

2. While trying to make out a case for showing indulgence in revisional jurisdiction, learned Addl. Public Prosecutor would submit that apart from the evidence of complainant P.W.3, there are two other witnesses, namely, P.W.4 Hanuman, son of the complainant and P.W.6 Subhash, an adjoining land owner. In addition, he would urge that the stick as is used by accused

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persons in commission of the offence was very much seized. The contents of the complaint are corroborated with injury certificate which was proved through the evidence of P.W.7 Medical Officer. He would then urge that the acquittal as is ordered by disbelieving the evidence of all the witnesses, is without any basis, particularly in the light of the reasons furnished by the learned court below. According to him, just because a civil suit is pending between the parties, that does not mean that respondents-accused are falsely implicated in the crime in question.

3. Per contra, learned Counsel appearing on behalf of respondents-accused, supported the order and submits that both the courts below have concurrently held that the prosecution has failed to prove its case beyond reasonable doubt.

4. With the assistance of the learned Addl. Public Prosecutor, I have gone through the evidence of the complainant, his son P.W.4 Hanuman and independent witness P.W. 6 Subhash. I have also examined the evidence of P.W.7 Medical Officer in the light of the injury certificate at Exh.125. It is required to be noted that the complainant P.W.3 Suryabhan claimed to have been ploughing his land bearing Gat No.72, in relation to which a civil suit was instituted by him against Ashabai, his sister-in-law for partition and separate possession, which was dismissed and against which an appeal at the behest of the complainant is pending before the learned District Judge, in which there is an injunction operating against Ashabai from creating third party interest. It is also required to be noted that father

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of respondents-accused had purchased the said property and as such, there exists a dispute between complainant P.W.3 and the family of respondents-accused.

5. Apart from above, having regard to pendency of civil dispute between the parties, in relation to the land in question, coupled with the fact that complainant P.W.3 had not mentioned about presence of his son P.W.4 Hanuman at the scene of the offence, both the courts below have rightly disbelieved their testimonies, for want of corroboration from any other independent witness.

6. P.W.6 Subhash, an adjoining land owner, in his cross-examination has admitted that he has boundary dispute with the respondents-accused. His testimony does not repose any confidence, particularly when he claimed that he had voluntarily gone to the house of Police Patil, where police had recorded his statement under section 164 of the Code of Criminal Procedure.

7. Both the courts below, in my opinion, have rightly held that the evidence of P.Ws. 3, 4 and 6 cannot be believed, as presence of P.W.4 Hanuman at the scene of the offence was under doubt. His presence was not reflected in the first information report, whereas P.W.6 Subhash claimed to have given statement voluntarily to the Investigating Officer and without any pressure.

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8. In view of above, in my opinion, no case for interference is made out. Criminal Revision Application stands dismissed.

(N.W. SAMBRE, J.)

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