

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

CRIM.REVISION APPLICATION NO. 16 OF 2004

Baban s/o Khandu Ingole

Age : 31 Yrs., Occ. Labour,

R/o : Basmath, Tq.

Basmath, Dist. : Parbhani.

..... APPLICANT/

[ORIGINAL

APPELLANT/ACCUSED NO. 1]

VERSUS

The State of Maharashtra

Through Police Station,

Basmath.

..... RESPONDENT

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Mr. Patel Fayaaj h/f Mr. P.R.Katneshwarkar,
Advocate for Applicant.

Mr. P.N.Kutti, A.P.P. for Non applicant –State.

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 21st NOVEMBER, 2016

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard Mr. Patel Fayaaj holding for Mr. P.R.Katneshwarkar, learned Advocate for the applicant and Mr. P.N.Kutti, learned A.P.P. for non applicant – State.
3. The applicant has challenged the Judgment passed by the Sessions Court dismissing the Appeal filed by the applicant and maintaining the Judgment passed by the Judicial Magistrate First Class, Basmath, by which the applicant is convicted for the offence punishable u/s 448 read with 34 of the Indian Penal Code.
4. The submission on behalf of the applicant is that no specific role was attributed to the applicant and even his presence on the spot, at the time of incident, has not been established by the prosecution. It is further submitted that the charge was framed for the offence punishable u/s 448 of the Indian Penal

Code for criminal house trespass when undisputedly the property in question was open land and, therefore, the applicant could not have been prosecuted for committing house trespass.

5. Learned A.P.P. has pointed out the considerations of the learned Additional Sessions Judge in para No. 19 of the impugned Judgment and has submitted that the conviction has to be treated as u/s 447 of the Indian Penal Code, as rightly recorded by the learned Additional Sessions Judge.

6. With the assistance of the learned counsel for the applicant and the learned A.P.P., I have examined the record. The charge against the applicant was for commission of criminal house trespass. The learned Advocate for the applicant has rightly submitted that the charge was erroneous and there could not have been prosecution of the applicant on the basis of the above charge, as undisputedly the property in question was open land. Learned Additional Sessions Judge has also recorded

factual aspect that the property in question was an open land.

7. Apart from this, I find that the prosecution has failed to establish beyond reasonable doubt the presence of the applicant on the spot at the time of the alleged incident. The learned Magistrate has not referred to any specific evidence, by which any role is attributed to the applicant and the considerations are of general nature that the accused persons were present on the spot and were trying to erect huts. The conviction of the applicant on such general considerations, can not be sustained. Hence, the following order.

- (i) The Judgment passed by the Judicial Magistrate First Class, Basmath and maintained by the Sessions Court convicting the applicant is set aside.
- (ii) The applicant is acquitted of the charge for the offences punishable u/ss 143,448 read

with 34 of the Indian Penal Code.

- (iii) The amount of fine deposited by the applicant be refunded to him.
- (iv) In the circumstances, parties to bear their own costs.
- (v) Needless to state that the order passed by this Court directing issuance of non bailable warrant against the applicant stands recalled.
- (vi) Rule is made absolute in the above terms.

[Z.A.HAQ, J.]