

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

CRIMINAL REVISION APPLICATION NO. 400 OF 2003

Kishan s/o Masaji Sakhare,
age major, Occ. Labourer,
R/o Puini (Khd), Tq. Basmath,
Dist. Hingoli.

..Rev. Petitioner..
(orig complainant)

VERSUS

1. The State of Maharashtra,
[Copy served on P P High Court,
of Judicature of Bombay
Bench at Aurangabad.]
2. Balaji s/o Bhikaji Kadam,
age 29 yrs.
3. Ashok s/o Limbaji Kadam,
age 29 yrs.
4. Pandit s/o Sambhaji Kadam,
age 34 yrs.
5. Bhikaji s/o Dajiba Kadam,
age 34 yrs.
6. Namdeo s/o Shripati Kadam,
age 54 yrs.
7. Devidas s/o Limbaji Kadam,
age 29 yrs.
8. Maroti s/o Piraji Kadam,
age 36 yrs
9. Ganesh s/o Vitthal Kadam,
age 34 yrs.
10. Gopal s/o Venkoji Kadam,
age 32 yrs.

11. Sudam s/o Ganpati Kadam,
age 22 yrs.

All R/o Parwa, Tq. Basmath,
Dist. Hingoli.

12. Datta s/o Sakharam Chopade,
age 42 yrs.

13. Subhash s/o Jairam Chopade,
age 39 yrs.

Both R/o Puini (Kd), Tq. Basmath,
District Hingoli.

..Respondents..

...

Advocate for Applicant : Mr V D Patnoorkar
APP for Respondents: Mr C V Dharurkar
Advocate for Respondents 2-7, 9-13 : Mr S P Katneshwarkar

...

CORAM : V.K. JADHAV, J.

Dated: July 20, 2016

...

ORAL JUDGMENT :-

1. Heard learned counsel for the revision petitioner and the learned counsel appearing for the respondents/original accused. I have also heard the learned APP for the respondent State.

2. Revision petitioner is the original complainant. On the basis of his complaint, crime came to be registered in the concerned police station for the offences punishable u/s 147, 148, 149, 504, 506 r/w 34 of Indian Penal Code and also u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and also under section

7(1)(d) of the protection of Civil Rights Act. All respondents/original accused came to be tried by the Additional Sessions Judge, and Special Judge (Under Atrocities Act), Parbhani vide Special Case No.83/1994. The learned Additional Sessions Judge, Parbhani, by judgment and order dated 10.9.1998, acquitted all the accused persons for the offences punishable under sections 147, 148, 149, 323, 506 read with section 34 of the Indian Penal Code and also under section 3(1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 and also under section 7(1) (d) of the protection of Civil Rights Act. Being aggrieved by the same, original complainant has preferred this Criminal Revision Application against order of acquittal.

3. The learned counsel for the revision applicant submits that, the learned Additional Sessions Judge, in paragraph no.20 of the judgment, has accepted that all the witnesses have stated utterances of the accused which amount to abuse on the basis of caste. Admittedly, all the accused are belonging to community 'Maratha', whereas all the eye witnesses are belonging to a community "Nav-Boudha". Learned counsel submits that, prosecution has succeeded in proving charge u/s 3 (1) (x) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act against respondents/original accused. Learned counsel submits that, in paragraph no.18 of the judgment, learned Additional Sessions Judge, Parbhani has also observed that the witnesses have sustained injuries, however, they have not sustained any grievous injury. Learned counsel submits that, in the backdrop of these observations, the Additional Sessions Judge ought to have convicted all the accused for the charges levelled against them. However, the learned Additional Sessions Judge, Parbhani, by its impugned judgment and order dated 10.9.1998, acquitted all the accused. Learned counsel submits that, the order passed by the Additional Sessions Judge in Special Case No.83/1994 is liable to be quashed and set aside and respondents/original accused are liable to be convicted for the charges levelled and proved against them.

4. Learned counsel for respondents/original accused submits that, the learned Additional Sessions Judge has accepted the utterances of the accused, which amount to abuse on the basis of caste, however, further observed in the same paragraph that, in the evidence of eye witnesses, falsehood might have been mixed to aggravate the offence against the accused. In the same paragraph, learned Additional

Sessions Judge has concluded points by observing that as far as actual utterances at the relevant time, the same has not been proved beyond reasonable doubt. Learned counsel submits that, there is an element of exaggeration at the time of lodging of the report and incident took place because of an attempt of encroachment alone. Learned counsel submits that, the Additional Sessions Judge, Parbhani has, thus, rightly given benefit of doubt to the respondents/accused. Learned counsel submits that, so far as injuries sustained by witnesses is concerned, learned Additional Sessions Judge has rightly observed in paragraph No.18 of the Judgment that, there is an attempt on the part of the prosecution witnesses to convert *Gayran* land into agricultural land. Learned counsel submits that, if the villagers have right to graze their cattle in common grazing ground, and if any person prevents such activities, aggrieved person has right to exercise private defence. None of the prosecution witnesses have sustained grievous injury. The learned Additional Sessions Judge, Parbhani, has, therefore observed that, even if it is concluded that accused did use force, it appears that they used force within the degree wherein the right of private defence is allowed to be exercised. Learned counsel submits that Additional Sessions Judge has rightly observed that the respondents/accused

have not exceeded the right of private defence. Learned counsel submits that, learned Additional Sessions Judge has thus rightly given benefit of doubt to all the accused and accordingly acquitted them.

5. I have also heard learned APP for the State.

6. So far as allegations about abuses given to the prosecution witnesses on caste basis are concerned, it appears that, alleged incident had taken place on account of an attempt of encroachment over the *Gayran* land. It is thus, unlikely on the part of respondents/original accused to make utterances which amount to abuse on the basis of caste. The learned Additional Sessions Judge has rightly observed that there was element of exaggeration in the evidence of prosecution witnesses.

7. On the day of incident, at about 10.00 am, all the prosecution witnesses entered into the cattle field and started digging operations so that they could cultivate the said land. Accused are the adjoining land owners. They were grazing their cattle in the said *Gayran* since many years. Even though accused have not raised a specific private defence, however, the same can be considered while

appreciating the prosecution evidence. On the day of incident, if there was an attempt on the part of the prosecution witnesses to convert *Gayran* land into agricultural land, adjoining land holders have every right to prevent them from converting said *Gayran* land into agricultural land illegally. Learned Judge of the Trial Court is right in saying that even though the accused used force, they have used said force within the degree wherein right of private defence is allowed to be exercised. None of the prosecution witnesses sustained grievous injuries as such. In that way, accused have not exceeded their right to private defence.

8. In view of the above, I do not find any fault in the impugned Judgment and order of acquittal passed by the learned Additional Sessions Judge, Parbhani in Special Case No.83/1994. No interference is called for. Criminal Revision Application is hereby dismissed.

sd/-

(V.K. JADHAV, J.)

...

aaa/-