

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

CRIMINAL APPLICATION NO.3964 OF 2015

Anil Ramesh Dahiwadkar,
Age 54 years, Occu. Service,
Residing at : 1204/13,
Ghole Road, Pune 411 004

..Applicant

Versus

1. B.R. Adhav,
Age 60 years, Occu. Service,
R/o Boys High School,
Clara Bruce School Compound,
Station Road, Ahmednagar
2. Mr S.K. Alhat,
Age 45 years, Occu. Service,
R/o Sisal Handicraft Ground,
Station road, Ahmednagar
3. Mr Ashok Ghodke,
Age 45 years, Occu. Service,
R/o Clara Bruce School Compound,
Station road, Ahmednagar

4. The State of Maharashtra

..Respondents

Mr N.S. Jaju, Advocate for applicant
Mr A.K. Gawali, Advocate for respondents No.1 to 3
Mr A.S. Shinde, A.P.P. for respondent No.4

CORAM : N.W. SAMBRE, J.

DATE : 5th July 2016

PER COURT

1. The United Church Board for World Ministries (hereinafter referred to as 'U.C.B.W.M.' for brevity) is an institution of American Board of Commission for Foreign Commission, which was running Khristi Samaj Sahitya Prasarak Sanstha (hereinafter referred to as K.S.S.M.S. for brevity), which was managing a book shop at

Ahmednagar. The shop premises was run based on an agreement in between them i.e. U.C.B.W.M. And K.S.S.M.S. Since 1981.

2. One Ashok Ghodke was in service of K.S.S.M.S.

3. Marathi mission, which has no right over the above referred shop premises, in connivance with the said Ashok Ghodke, took over the said shop premises and claimed to have committed trace-pass resulting into filing of Regular Criminal Case No.44 of 1989 in the Court of Chief Judicial Magistrate, Ahmednagar alleging offences under Sections 408, 380, 448 read with Sec.34 of Indian Penal Code against the trustees of Marathi mission and Ashok Ghodke. The said complaint case came to be dismissed by the order dated 21st April 1989 of Chief Judicial Magistrate, Ahmednagar under the provisions of Section 203 of Criminal Procedure Code. A revision against the said order of dismissal being Revision No.309 of 1989 also came to be dismissed by the learned Additional Sessions Judge, Ahmednagar on 6th March 1993.

4. Based on the same set of facts, another Regular Criminal Case No.271 of 1995 came to be filed alleging offence under Sections 403, 418, 420 read with Sec. 34 of Indian Penal Code by the representative of K.S.S.M.S. The said complaint case has resulted into acquittal of the accused pursuant to the provisions of Section 248 (1) of Criminal Procedure Code by the judgment and order dated 22nd November 2012 passed by learned Chief Judicial Magistrate, Ahmednagar. As

such, present application by the original complainant for grant of leave to appeal against acquittal.

5. Heard Mr Jaju, learned Counsel for the applicant, Mr Gawali, learned Counsel for respondents No.1 to3 and Mr Shinde, learned A.P.P. for respondent No.4-State.

6. Mr Gawali raises issue of very maintainability of the present application. According to him, judgment of acquittal was delivered by learned Chief Judicial Magistrate on 22nd November 2012 and there is no explanation for preferring the present application at such belated stage, i.e. after two and half years.

7. He would then submit that the application is also hit by the issue of estoppel or *res-judicata*. As such, according to him, the application is liable to be rejected.

8. While resisting the above submissions, Mr Jaju, learned Counsel for the applicant submits that for filing an application for grant of leave to file appeal, particularly under the provisions of Criminal Procedure Code, no limitation is provided or prescribed and as such, even if the present application is filed after a period of two and half years, still it has to be considered to be within reasonable period. He would then submit that if the pleadings in the Regular Criminal Case No.271 of 1995 and that of in Regular Criminal Case No.44 of 1989 are compared, the issue of estoppel or *res-judicata* will not apply.

9. According to Mr Jaju, the present application needs to be considered on merit on the ground that the learned Court below has

inappropriately considered the findings recorded in earlier proceedings, i.e. Regular Criminal Case No.44 of 1989. According to him, even if Civil Suit No.185 of 1986 in respect of encroachment of property was initiated, still the issue as regards criminal liability is required to be gone into independently. He would then urge that the finding that the applicant has no authority to file the complaint is contrary to the record, as the resolution Exh.45, which was produced was not properly appreciated. According to him, the other documentary evidence Exh.201 to 262 is not properly appreciated by the learned Magistrate and as such, according to him, the leave needs to be granted.

10. While considering the above referred submissions, the claim as is sought to be put forth in the complaint case, particularly in the background of pleadings, if noticed, the fact remains that the issue qua the possession of the shop block in question was subjudice in civil suit before the Court of competent jurisdiction to look into the civil rights of each of the parties.

11. It is required to be appreciated that the law as is governed the issue, i.e. findings recorded by the civil Court are binding on the criminal Court, however, converse is not true is required to be appreciated herein. Appropriate Support could be drawn from the judgment of Apex Court in the matter of **Karam Chand Ganga Prasad And Anr. vs Union Of India (Uoi) And Ors.**, reported in **AIR 71 SC 1244.**

12. It is then required to be noted that once the complaint which was preferred in 1989 being Regular Cri.Case No.44 of 1989 was on the same set of facts and dismissed under Section 203 of Cr.P.C., with the same cause of action, the new matter being Regular Cri.Case No.271 of 1995 came to be initiated. It is then to be noted that the learned Magistrate, while recording the acquittal has considered the points, as were raised in the complaint of 1989 and then proceed to record the acquittal on merit.

13. Apart from above, it is to be noted that the present application for leave to file appeal against the order of acquittal is without any explanation qua the delay caused.

14. In my opinion, for the reasons recorded herein above and in view of law laid down by the Apex Court in the matter of **M/s Thermax Limited & Ors. Vs. K.M. Johny & Ors.**, reported in **2011 (4) Crimes 179**, it could be inferred that the applicant is trying to circumvent the jurisdiction of the civil Court, as there is a flavour of the civil nature of dispute in the case in hand.

15. As such, the leave is refused. Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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