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

CRIMINAL APPLICATION NO.4482 OF 2015

Mahavir s/o Madanlalji Tated,
Age : 50 years, Occu. Business,
R/o New Mondha, Parali Vaijnath,
Tq. Parali, Dist. Beed

..APPLICANT
(Orig. Complainant)

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Parali Vaijnath Rural Police Station,
Tq. Parali Vaijnath, Dist. Beed
2. Rekha D/o Mahadeo Phad,
Age : 33 years, Occu. Household,
3. Mitravinda w/o Mahadeo Phad,
Age : 52 years, Occu. Household,
4. Jayashri w/o Vaijnath Munde,
Age : 41 years, Occu. Household,
5. Kiran s/o Mahadeo Phad,
Age : 29 years, Occu. Agriculture

Respondent Nos.2 to 5
All R/o Swati Nagar Parali Vaijnath,
Tq. Parali Vaijnath, Dist. Beed

6. Siddheshwar s/o Sheshrao Gutte,
Age : 26 years, Occu. Driver JCB
R/o Wadgaon Dadhari,
Tq. Parali Vaijnath, Dist. Beed

..RESPONDENTS
(Respondent Nos.2 to 6 – Orig. Accused)

Mr Deshmukh, Advocate holding for Mr S.G. Chapalgaonkar, Advocate for applicant;
Mr C.V. Dharurkar, Addl. Public Prosecutor for respondent no.1;
Mr U.B. Bondar, Advocate for respondents no.2 to 6

CORAM : N.W. SAMBRE, J.

(2)

DATE : 26th September, 2016**ORAL ORDER :**

The respondents-accused were prosecuted for offences punishable under sections 395, 447, 452 and 427 of the Indian Penal Code before learned Additional Sessions Judge, Ambajogai, in Sessions Case No.67 of 2012.

2. After the trial, the respondents-accused came to be acquitted of the charges levelled against them, by judgment and order dated 20th February, 2015, rendered by the learned Additional Sessions Judge, Ambajogai. As such, present application at the behest of the complainant, seeking leave to file appeal against acquittal.

3. Heard Mr Deshmukh, learned Counsel appearing on behalf of applicant-original complainant. According to him, the evidence of P.W.4 Mahadeo, who was present at the scene of the offence, being the servant of the owner - original complainant, is wrongly discarded. He would then submit that once it is established that mobile phone of P.W.4 Mahadeo Kolhe was recovered from accused no.1 Rekha, coupled with the fact that the ownership of disputed property of that of the applicant and presence of JCB machine was not disputed, the only conclusion that could have been drawn by the learned Court below, is conviction of respondents – accused. He would impress this Court by relying upon evidence of P.W.4 Mahadeo Kolhe and the present applicant - complainant.

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4. While opposing the claim, Mr Bondar, learned Counsel appearing on behalf of respondents-accused, would urge that the learned Additional Sessions Judge has considered all facets of the matter, including the evidence brought before him.

5. With the assistance, having perused the judgment of acquittal, it is required to be noted that, during investigation of C.R. No.104 of 2010, it was noted that the wall was demolished. Spot panchnama Exh.57 and seizure of JCB machine from the scene of the offence is recorded.

6. Learned Additional Sessions Judge framed charge against the accused persons at Exh.43. In support of its case, prosecution has examined in all six witnesses, namely, P.W.1 Sk. Siddiqui Sk. Mahemood at Exh.56, P.W.2 Shivaji Bansidhar Likhe at Exh.58, P.W.3 Mahavir Madanlalji Tated at Exh.68, P.W.4 Mahadeo Narayan Kolhe at Exh.82, P.W.5 Vijay Shiwalal Wakekar at Exh.87 and P.W.6 Sk. Habib Raheman Abdul Reham at Exh.97.

7. It is then required to be noted that the star witness to the incident P.W.4 Mahadeo Kolhe was examined in support of the prosecution case. Though it is claimed that there is seizure of mobile phone of P.W.4 Mahadeo Kolhe from accused no.1 Rekha, still overall reading of the evidence of the said witness does not depict that the alleged phone was owned by the said witness and it was seized from the custody of accused no.1 Rekha, who had taken or snatched it from the said witness.

(4)

8. The presence of JCB machine at the scene of the offence is not disputed, however, the fact remains that it is not brought on record, whether the accused had hired the said JCB machine or that the accused were in JCB machine.

9. In absence of expert's evidence and exact location of the wall alleged to have been demolished, is also not proved. The other witness to the incident, namely, P.W.1 Sk. Siddiqui has not identified the accused persons.

10. Learned Additional Sessions Judge has appreciated entire evidence on record and in my opinion, has rightly recorded the acquittal.

11. No case for interference, particularly grant of leave is made out. Criminal Application as such fails and stands rejected. Leave stands refused.

(N.W. SAMBRE, J.)

amj