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

CRIMINAL REVISION APPLICATION NO.187 OF 2015

Ambadas s/o Totaram Jadhav,
Age : 40 years, Occu.Agri.,
R/o Dehed, Tq. Bhokardan,
Dist. Jalna

..APPLICANT
(Orig. Complainant)

VERSUS

1. The State of Maharashtra
2. Bhika s/o Kashinath Bavaskar,
Age 68 years, Occu.Agri.,
R/o Dehed, Tq. Bhokardan,
Dist. Jalna
3. Sanju s/o Bhika Bavaskar,
Age : 36 years, Occu.Agri.,

R/o Dehed, Tq. Bhokardan,
Dist. Jalna

..RESPONDENTS
(Nos. 2 & 3 – Orig. Accused)

Mr V.C. Patil, Advocate for applicant;
Mr R.V. Dasalkar, Addl. Public Prosecutor for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 20th September, 2016

ORAL ORDER :

Respondent no.2 – accused appears to be father of respondent no.3, who were tried in S.T.C. No.752 of 2010, for an offence of criminal trespass, punishable under section 447 read with section 34 of the Indian Penal Code.

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2. It is the case of the present applicant – complainant, that he owns 79 R land out of Gat No.403 at village Dehed and about four years prior to 2nd June, 2010, land to the extent of 1 to 1.5 R was encroached by the respondents – accused.

3. Pursuant to a complaint, C.R. No.52 of 2010 was registered with Bhokardan police station and after investigation, charge-sheet came to be filed.

4. In order to prove its case, the prosecution has examined P.W.1 Jagdeo at Exh.19, P.W.2 Mohan at Exh.24, P.W.3 informant Ambadas at Exh.26 and P.W.4 Totaram at Exh.29. The complaint is at Exh.27. The first information report is at Exh.28, whereas the spot panchnama is at Exh.20.

5. The defence of the respondents – accused was of total denial.

6. The ownership of the applicant on 79 R land, as observed herein above, is not in dispute. P.W.3 informant Ambadas, in his deposition has tried to establish his case through the evidence of P.W.1 panch witness Jagdeo. P.W.2 Mohan and P.W.4 Totaram, father of the complainant, has also supported the version of complainant.

7. The learned Trial Judge has noticed that the statement in the complaint speaks of encroachment about 4 to 5 years prior to filing of the

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complaint and in absence of any evidence so as to infer encroachment, particularly in absence of any report from the Taluka Inspector of Land Records, has proceeded to acquit the accused, which order was confirmed by learned Additional Sessions Judge, Jalna, by judgment and order dated 19th August, 2015, passed in Criminal Appeal No.88 of 2011.

8. Mr Patil, the learned Counsel appearing on behalf of the applicant - complainant would urge that the Courts below have committed an error apparent on the face of record in considering the evidence of P.Ws.1, 2 and 4, as according to him, the ownership of the applicant over the land in question is not in dispute. He would then urge that based on oral evidence of the above referred witnesses, the factum of criminal trespass was very much established. Although the Investigating Officer was not examined, yet he would urge that from the evidence of P.W.1 Jagdeo, the panchnama was very much proved. As such, according to him, the impugned judgment deserves to be set aside and the matter deserves to be remitted back for re-consideration.

9. Learned Addl. Public Prosecutor supported the contentions raised by the learned Counsel for the applicant.

10. Having bestowed my thoughts to the submissions made, it is required to be noted that, it is not in dispute that the complainant himself had pleaded in the complaint that the encroachment in question, which was to the extent of 1 to 1.5 R, was committed about 4 to 5 years prior to

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filing of the complaint. So far as the encroachment is concerned, even assuming that the same is not disputed, so as to find out whether an offence punishable under section 447 of the Indian Penal Code (offence of criminal trespass) is committed or not, the evidence of the witnesses is required to be analyzed. What is stated in the complaint and evidence of P.W.3 complainant is that the approximate area over which the encroachment is alleged to have been committed is 1 to 1.5 R. There is no documentary or expert's evidence brought on record to infer exact area alleged to have been encroached by the respondents – accused.

11. Be that as it may, so as to establish criminal trespass, if necessary ingredients as are contemplated in the said section are sought to be evaluated from the material evidence brought on record, it is required to be noted that the prosecution has failed to establish offence of criminal trespass, in the light of above observations and upon analysis of the evidence brought on record.

12. Both the Courts below have held that the case as is sought to be espoused by the present applicant for criminal trespass, was not established. Non-examination of the Investigating Officer is not fatal to the claim of the present applicant, however, necessary ingredients for establishing the case cannot be inferred from the evidence available and as such, both the Courts below have rightly ordered acquittal of the accused. No case for interference in exercise of revisional jurisdiction is made out.

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13. In view thereof, Criminal Revision fails and stands dismissed.

(N.W. SAMBRE, J.)

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