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

CRIMINAL REVISION APPLICATION NO. 258 OF 2014

Ananda Pandurang Sonwale,
Age: 53 years, Occu: Service,
R/o. Panbhosi, Tq. Kandhar,
Dist. : Nanded

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Loha Police Station,
Tq. Loha, Dist. Nanded
2. Dnyanoba Bali Bhosikar,
Age: 37 years, Occu: Agril.
3. Venkati Ramji Bhosikar,
Age: 37 years, Occu: Agril.
4. Atmaram Shankar Panchal,
Age: 34 years, Occu: Agril.
5. Madhav Manika Bhosikar,
Age: 32 years, Occu: Agril.

All R/o. Panbhosi, Tq. Kandhar,
Dist. : Nanded

..RESPONDENTS

Mr D. M. Shinde, Advocate for applicant;
Mr R. V. Dasalkar, Addl. Public Prosecutor for respondent No. 1;
Mr Vaibhav Dhage, Advocate for respondent Nos. 2 to 5

CORAM : N.W. SAMBRE, J.

DATE : 23rd August, 2016

ORAL ORDER :

The present applicant – original complainant had moved Summary Criminal Case No.362 of 2007, before the court of 2nd Judicial Magistrate

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First Class, Kandhar, for offences punishable under sections 447, 506 read with section 34 of the Indian Penal Code.

2. In support of the claim put-forth in the complaint, the complainant had examined in all four witnesses, who were his blood relations.

3. The case of the complainant, before the Magistrate was that the land Gat No.2 was owned by him and respondents no.2 to 5 – accused had encroached on the said land and thereby committed criminal trespass.

4. The learned Magistrate, after evaluating evidence in an analytical manner, acquitted respondents – accused on merits, which was confirmed by the learned Additional Sessions Judge, Kandhar in Criminal Appeal No.9 of 2012, by an order dated 8th October, 2014. Thus, the present Revision.

5. While trying to make out a case for indulgence under the revisional jurisdiction, learned Counsel appearing on behalf of the applicant, would urge that both the Courts below have committed an error by not exercising the jurisdiction vested in it and have rather acquitted the accused, though there was sufficient oral and documentary evidence to depict *prima facie* involvement of respondents-accused in the crime in question. According to him, even if the witnesses examined in the case are related to the applicant, still there is no statutory embargo to disbelieve such witnesses

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and since their testimonies were in corroboration with that of the case pleaded in the complaint should have been accepted. Learned Counsel then would urge that this Court should remand the matter for considering afresh by the learned Magistrate.

6. Learned Addl. Public Prosecutor and learned Counsel appearing on behalf of respondents no.2 to 5 supported the impugned orders. They submit that the order of the learned Magistrate is after taking into account not only the evidence of the four witnesses including that of the complainant, but also the other factual matrix of initiation of proceedings against other encroachers over the land in question for recovery of possession.

7. With the assistance, I have perused the judgments rendered by the courts below. It is required to be noted that, it is the case of the applicant that the respondents – accused had committed criminal trespass by entering his land with intention to take away its possession and committed offence punishable under section 447 read with section 34 of the Indian Penal Code. It is also claimed by the applicant – complainant that, in furtherance of common intention, the respondents – accused committed criminal intimidation by threatening to kill him and as such have committed an offence punishable under section 506-II read with section 34 of the Indian Penal Code.

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8. It was the case of the applicant that he was owner of the land bearing Gat No.2 at village Panbhosi, ad measuring 85 R. It is then claimed that it is brought in the evidence that there are about more than fifty encroachers and the present applicant had initiated proceedings seeking recovery of possession from them. It is also brought in the evidence of the witnesses of the applicant that part of the land was already sold by the mother of the applicant to the extent of 25 R to one Sambhaji and 30 R to one Maroti.

9. From the record, it is then claimed that the respondents – accused have encroached on the land in question.

10. Both the courts below have disbelieved the witnesses of the present applicant on two counts (a) that the incident in question was witnessed by more than ten persons and the applicant has brought evidence before the court only of his close relatives and (b) the fact that there already existed a civil dispute between the parties.

11. In my opinion, the findings recorded by both the courts below ordering acquittal of the respondents-accused do not call for any interference in exercise of revisional jurisdiction when this Court has failed to notice any material illegality or failure to exercise the jurisdiction.

12. *Prima facie*, it could be gathered from the present case as is brought before me, that it is only with an intention to circumvent the civil

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proceedings, the applicant has initiated present proceedings. In view thereof, revision lacks merits and stands dismissed.

(N.W. SAMBRE, J.)

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