

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

CRIMINAL APPLICATION NO. 5902 OF 2015

State of Maharashtra

..APPLICANT

VERSUS

Dnyaneshwar Laxman Chunkhade and Others

..RESPONDENTS

....

Mrs. R.K. Ladda, APP for applicant.

Mr. Ravindra J. Nirmal, Advocate h/f Mr. Ramchandra J. Nirmal,
Advocate for respondents.

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**CORAM : INDIRA K. JAIN, J.
DATED : 31st MARCH, 2016**

ORDER :

1. This application is under Section 378(1)(b) of the Code of Criminal Procedure for leave to appeal against judgment and order dated 13.07.2015 passed by learned Judicial Magistrate First Class, Jalna in Regular Criminal Case No. 796/2011. By the said judgment and order learned Magistrate acquitted respondents/accused of the offences punishable under Sections 325, 324, 341, 427, 504 and 506 read with 34 of the Indian Penal Code.

2. Heard Mrs. Ladda, learned APP for applicant and Mr. Nirmal learned Counsel for respondents. Perused record.

3. Prosecution case in brief is as under:

Informant Arvind Chavan was resident of village Punegaon. His parents were residing at Aurangabad with his brother. He was holding an agricultural land at Punegaon. Before one month of the incident Namdev Laxman Chunkhade adjoining land holder destroyed the common bandh and carried away soil from the land of informant. Report was lodged against Namdev. According to the prosecution accused was insisting the informant to withdraw complaint lodged by him. Accused also abused and threatened the informant of dire consequences in case he would not withdraw the complaint.

4. Incident occurred on 05.06.2011. Informant had been to village Islamwadi on his motorcycle. At around 7.30 p.m. he reached the place known as Holi. It is alleged that accused Laxman wrongfully restrained him, threatened to kill as he lodged report and assaulted with iron rod on his head. Other accused who accompanied accused Laxman assaulted the informant with stick and iron rod. Informant raised alarm. People assembled and due to intervention of people informant was rescued. Accused caused damage to the motorcycle of informant.

5. Informant was admitted to hospital. His statement was recorded in hospital by police. The same was treated as FIR. Crime was

registered. Investigation proceeded. On completion of investigation charge sheet was submitted before the learned Judicial Magistrate First Class, Jalna.

6. Charge came to be framed against the accused. They pleaded not guilty and claimed to be tried. According to accused there was strong political rivalry and they were falsely implicated.

7. In support of the case prosecution examined in all seven witnesses. PW 1 Maroti and PW 2 Murlidhar were the panch witnesses. They did not support the prosecution on spot and recovery panchanamas. PW 3 Arvind Chavan was the first informant. His evidence was in accordance with FIR. He stated that while he proceeded on motorcycle and reached the place Holi, accused wrongfully restrained him, threatened to kill for lodging report and also assaulted him with weapons. PW 4 Raosaheb and PW 5 Rameshwar eye witnesses supported the evidence of complainant to the extent of threats and assault. They did not state that complainant was wrongfully restrained by the accused.

8. Based on the evidence of PWs 3, 4 and 5 it is contended by learned APP that there is a strong case against the accused and their evidence was not appreciated in proper perspective by Trial Court. She

would submit that prosecution has a chance to succeed in appeal and prays to grant leave.

9. Per contra learned Counsel for respondents submitted that 50-60 independent witnesses were available on the spot but prosecution has chosen to examine highly interested witnesses and so Trial Court has rightly rejected the testimony of complainant and the alleged eye witnesses.

10. It is pertinent to note that accused have raised specific defence of political enmity. It is on record that PW 4 Raosaheb and PW 5 Rameshwar are the relatives of complainant. From the evidence of these witnesses it can be gathered that huge mob had gathered on the spot. More than 50-60 persons had assembled. Independent witnesses were easily available to the prosecution. In view of the specific defence raised by accused regarding political enmity it was incumbent on the prosecution to examine independent witnesses instead of choosing interested witnesses as eye witnesses.

11. In the above background this Court finds that prosecution has no case on merits. Application deserves to be dismissed. Hence the following order:

ORDER

- I) Criminal Application No. 5902 of 2015 stands dismissed.
- II) Leave refused.

(INDIRA K. JAIN, J.)