

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

CRIMINAL APPLICATION NO.6218 OF 2015

Sanjay Bhagwat Raut .. Applicant

Versus

Tukaram Chagandeo Raut .. Respondent
and others

Mr.G.R.Syed, Advocate for the applicant
Mr.S.B.Ghute, Advocate for the respondent Nos.1 to 3

**CORAM : V.L.ACHLIYA,J.
DATED : 13.10.2016**

P.C. :-

1. The applicant/original complainant has preferred this application seeking leave to file appeal against the judgment and order dated 14.10.2015 delivered in S.C.C.No.230/2010 by the Judicial Magistrate, First Class, Paranda, Osmanabad.

2. Heard learned counsel for the applicant and respondent Nos.1 to 3 and further perused the impugned judgment and the copies of the depositions produced on record.

3. Mr. C.R.Syed learned counsel for the applicant strenuously contended that evidence as adduced by the complainant has not been appreciated in proper

perspective. He submits that PW-2-Bhagwat Raut injured and victim in the case has categorically deposed about the entire incident in minute detail which includes the injuries sustained at the hands of accused. The testimony of PW-2 is duly corroborated through testimony of PW-4-Dr. Sache Mohammad i.e. Medical Officer who examined the complainant and issued injury report Exh.83.

4. On the other hand learned counsel for the respondents has supported impugned judgment and order and contended that the reasons and findings recorded by the trial Court are fully in consonance with the evidence on record and there is absolutely no case is made out to entertain in appeal against the impugned judgment and order.

5. In order to appreciate the submissions advanced I have thoroughly perused the impugned judgment and order and the copies of the depositions placed on record. On 13.10.2010 PW-1-Sanjay Raut filed private complaint in the Court of Judicial Magistrate First Class, Paranda alleging therein that on 10.10.2010 at about 05.00 p.m. while his father PW-2-Bhagwat Raut was ploughing agricultural field the accused persons entered into the field and abused him. Accused No.1 and 3 got hold his father and accused No.2 assaulted him by means of stick.

On hearing shouts of PW-2 Bhagwat Raut his son PW-3-Rajendra Raut and two other persons namely Jagannath Kature and Baba Kature rushed to the field. They intervened in the quarrel and separated all of them. He further alleged that in the incident the accused assaulted his father by means of fisticuffs and kicks blows and also threatened to kill him. His brother Rajabhau informed this fact to him on telephone and thereafter he came on the spot. His father was initially taken to hospital. Although the complaint was lodged the police have treated the same as non-cognizable offence vide N.C.No.263/2010. Hence he filed the complaint. On due consideration of the complaint filed and the evidence produced in support of the complaint the learned Magistrate has issued process u/s 323, 504 r/w 34 of I.P.C. Against the accused. The particulars were framed. The accused pleaded no guilty and claim to be tried.

6. In order to prove its case the complainant examined himself as PW-1 and further examined his father Bhagwat Raut- PW-2 and brother Rajabhau and Doctor Sache Mohammad-PW-4. The accused have taken the defense of false implication on account of dispute over the boundaries of the agricultural land. On due appreciation of the evidence the learned Magistrate has acquitted the accused mainly on the ground that PW-1 and PW-3 witnesses

examined by the prosecution have not witnesses the incident and therefore their testimony is of no consequences to provide corroboration to the testimony of PW-2. He further found certain inconsistency and variance in the testimony of prosecution witness. The learned Magistrate further observed that though the independent witnesses were available and cited as witness the complainant has not examined those witnesses and therefore in absence of evidence of the independent witness it is not desirable to convict the accused specially for the reason that there was a dispute between the complainant and the accused on account of boundaries of the field.

7. In order to appreciate the submission as to whether the case is made out to grant leave to file appeal, I have perused the testimonies of the witness and the reasons and findings recorded by the trial Court. I am of the view, view taken by the trial Court cannot be termed as absurd and based upon improper appreciation of evidence. It has been brought on record through the cross-examination of PW-2 that there was a dispute between the applicant and accused on account of boundaries of the land and as many as three complaints were filed in that respect. It is evident from the testimony of PW-1 and 3 they have not personally witness

the incident and they rushed on the spot after the incident of assaulted was over. As per facts pleaded in the complaint itself the incident was alleged to be witness by two independent witness. However though independent witness were available they were not examined. In this view reasons and findings recorded by the trial Court cannot be turmed as perverse and based upon improper appreciation of evidence. It is settled law that in exercise of power u/s 378 of Cr.P.C. That though the Appellate Court is entitled to re-appreciate the evidence and conclusions drawn by the trial Court, but same is permissible only if the judgment of trial Court is perverse. If the view taken by the trial Court is plausible view therein general the High Court is not expected to interfere with the judgment and order of the trial Court. In this view the view taken by the Trial Court cannot be termed as perverse. So also no case of failure of justice or miscarriage of justice has been made out to entertain the appeal. The view taken by the trial Court is possible view and therefore I am not inclined to entertain the application seeking leave to file appeal. Accordingly the application is rejected.

[V.L.ACHLIYA,J.]