

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

**CRIMINAL APPLICATION NO.311 OF 2016
IN
CRIMINAL APPEAL NO.532 OF 2016
WITH
CRIMINAL APPEAL NO.532 OF 2016**

Shri.Shankar Bhiwa Pawar ... **Appellant/Applicant**
V/s.

Sanjay Vithal Bandkar & Ors. ... **Respondents**

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Mr.Subhash V. Gutte, Advocate for the Appellant/Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 28th NOVEMBER 2016.

P.C.

1 This is an application by the original informant for seeking leave to challenge the impugned Judgment and Order dated 26/04/2016 passed by the learned Special Court, Ratnagiri in Special Case No.7 of 2010, thereby acquitting the respondent Nos.1 to 4/original accused of the offence punishable under Section 3(1)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as, "the Prevention of Atrocities Act" for the sake of brevity.)

2 Heard the learned counsel appearing for the applicant/informant at great length of time. By taking me through the evidence of Shankar Bhiwa Pawar informant, the learned counsel

argued that his evidence shows that on 07/08/2010, employees of the M.S.E.B. had disconnected supply of electricity at the instance of respondent Nos.1 to 4 and thereby prevented the applicant/informant from enjoyment of his right over the water of the well. The learned counsel for the applicant further rely on the evidence of P.W.No.3-Amit Ghanashyam Pawar, Section Engineer and argued that disconnection of supply of electricity was as per directions of the superior officer of the M.S.E.B. Evidence of P.W.No.5 Rama Jaitu Dhondga is relied only to show that there was, in fact, no danger to the life of students by electric supply connection obtained by the informant in terms of order dated 21/11/2009 (Record page 53). It is argued that electric connection was sought for supply of water to the members of Scheduled Caste residing in the locality. By pointing out evidence of P.W.No.6 Sunil Ghase, Assistant Commissioner, it was argued that this witness has also proved disconnection of supply of electricity, and it was at the instance of respondent Nos.1 to 4. My attention was drawn to the findings in paragraph 17 of the Judgment of the learned Special Judge. It is argued that case of the informant was not properly considered by the learned Special Judge, because according to the informant, there was interference with the enjoyment of right of informant over the water due to disconnection of electricity supply and, therefore, the learned trial Court erred in holding that, as no one had prohibited the informant from fetching water no offence is made out. It is argued that other reasons stated by the learned Special Judge are also irrelevant and incorrect.

3 The learned Additional Public Prosecutor on instruction made a statement that the State has not decided to challenge the

Judgment and Order of acquittal recorded by the learned Special Judge, Ratnagiri on 26/04/2016 in Special Case No.7 of 2010.

4 I have carefully considered the submissions made by learned counsel for the applicant, and I have also carefully perused the evidence of all the witnesses examined by the prosecution in support of the charge.

5 At the outset, it is apposite to quote the penal provision invoked against respondent Nos.1 to 4 by the prosecuting agency. Section 3(1)(v) of the Prevention of Atrocities Act, 1989 reads thus :

3.Punishments for offences of atrocities : (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, –

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water.

6 Careful perusal of this penal provision goes to show that a person who is not belonging to Scheduled Caste and Scheduled Tribe, if wrongfully dispossess a member of Scheduled Caste and Scheduled Tribe from his land or premises, or who interferes with the enjoyment of his right over land premises or water, shall be punished under this penal provision.

7 For bring home the guilt to respondent Nos.1 to 4, the prosecution has examined in all six witnesses in this case. They are as under :

01	Shankar Bhiwa Pawar	(P.W.No.1) Informant
02	Balkrishna Hari Jadhav	(P.W.No.2)
03	Amit Ghanashyam Pawar	(P.W.No.3) Sub-Divisional Engineer, MSEB
04	Dattaram Shankar Salvi	(P.W.No.4) Pan witness to the Spot Panchanama
05	Rama Jaitu Dhondga	(P.W.No.5) Investigating Officer
06	Sunil Mahadev Ghase	(P.W.No.6) Investigating Officer

8 According to the prosecution case, respondent Nos.1 to 4 who are persons non-belonging to Scheduled Caste had interfered with the right of applicant over water of well situated in the jurisdiction of Village Panchayat Nate by causing disconnection of electric supply.

9 Evidence of P.W.No.1 Shankar Pawar shows that on 31/05/2010, he obtained permission from M.S.E.B. for installation of electric pump over the well in Village Nate. His evidence further goes to show that respondent Nos.1 to 4 are Village Sarpanch and other office bearers of Shikshak Palak Sangh of Zilha Parishad. They caused disconnections of electric supply by sending letters to M.S.E.B. Evidence of P.W.No.1 makes it clear that actual disconnection of electric supply was caused by squad of the M.S.E.B. on 07/08/2010. Cross-examination of P.W.No.1 Shankar Pawar, who is informant, and particularly paragraph 6 thereof makes it clear that, even after disconnection of electric supply, he, as well as, other persons are using water of said well for the purpose of drinking. Cross-examination of this informant goes to show that well in Survey No.2 belongs to Zilha Parishad, Ratnagiri, and in the very same Survey Number, Zilha

Parishad School is situated. The informant admitted that villagers had issued a letter to the Village Panchayat (Exh.57) that water from the well is required for school for the purpose of drinking and for preparation of mid-day meals. The informant had also accepted the fact that he has received the letter from the Executive Engineer, Z.P. Ratnagiri (Exh.61) to disconnect the electric connection. Cross-examination of the informant further shows that except supply of water to his house, he has not given any connection to other members of his community. The informant further accepted the fact that the villager's Educational Institution and Shikshak Palak Sangh have raised objection in respect of connection as the said was taken by laying the electric supply line from underground. The informant had not disputed the fact that the electricity supply was taken by laying underground supply line. The informant had accepted the fact that 45 parents of the students of the school have written letters to the Village Panchayat, Nate stating that due to underground electric wire, there is danger to life of students. It was in this context letters were submitted to the authorities of the M.S.E.B., which has resulted in disconnection of electric supply of water pump installed by the informant.

10 Requirement of Section 3(1)(v) of the Prevention of Atrocities Act, 1989 is wrongful dispossession or wrongful interference with enjoyment of rights of members of the Scheduled Caste over land, premises or water. In the case in hand, apprehending danger to the life of students taking education in the vicinity, complaints were lodged by the parents of students and ultimately communication was sent by the Village Panchayat to the M.S.E.B. It was the M.S.E.B. who has

disconnected the supply of M.S.E.B. as seen from the evidence of P.W.No.3 Amit Pawar. That is how respondent Nos.1 to 4 were acquitted by the learned Special Judge by observing that even water supply to the informant continues after disconnection of electric supply.

11 It is well settled that when two views are equally probable, then the view taken by the trial Court needs to be accepted. In the matter of *State of Punjab v. Karnail Singh*, 2003 AIR SCW 4065, it was observed by the Apex Court that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused further strengthened by his acquittal before trial Court.

12 Perusal of evidence adduced by the prosecution and the reasons given by the learned trial Court, while acquitting respondent Nos.1 to 4 of the charges levelled against them, does not allow me to hold that there are compelling reasons to interfere with acquittal of respondent Nos.1 to 4. No miscarriage of justice is seen to have been done nor admissible evidence is ignored by the trial Court.

13 In this view of the matter, no case for grant of leave is made out. The application is, therefore, rejected. Consequently, the appeal stands disposed of.

(A. M. BADAR J.)