

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

924 CRIMINAL APPLICATION NO. 1116 OF 2017
WITH APPLN/3933/2017

THE STATE OF MAHARASHTRA
VERSUS
MAHADEO AMBADAS NIRMAL

Shri. S.D. Ghayal, Additional Public Prosecutor, for
applicant in Criminal Application No.1116 of 2017

Shri. S.A. Ambad, Advocate, for applicant in Criminal
Application No.3933 of 2017

Shri. S.J. Salunke, Advocate, for respondent Nos.1 to 6.

Coram: T.V. NALAWADE, J.

Date: 20 December 2017

ORDER:

1) Both the applications are filed for grant of leave to file appeal against the decision of Criminal Appeal No.34/2016 which was pending in the Court of the learned Additional Sessions Judge Majalgaon, District Beed. The trial Court has convicted the present respondents for offences punishable under sections 143 and 147 of Indian Penal Code but in appeal filed by them they are acquitted by the Sessions Court. Both, the learned counsel for the

original complainant and the learned Additional Public Prosecutor are heard.

2) This Court has gone through the reasoning given by both the Courts. The learned Additional Public Prosecutor made available papers which include copy of spot panchanama and copies of the deposition.

3) Substantive evidence is given by Avidabai Funne (PW-2) that accused No.1 had entered her office, Nagar Parishad office, with five persons and then they had given abuses and they had pushed and pulled first informant and they had thrown the files. No background of the incident was given and the substantive evidence given does not show that she knew other persons. It was submitted that other persons were in the company of accused No.1. Only due to this circumstance it cannot be inferred they they were known to the first informant.

4) If the trial Court had acquitted the accused persons of the offence punishable under section 353 of IPC, the main offence, it was necessary for the State or

the original complainant to challenge the said decision of acquittal. For forming unlawful assembly there must be some common object and it can be said that the common object itself was not proved. Only because some persons came together it cannot be said that they had some common object. Omnibus evidence is given by the aforesaid lady that the persons who were sitting in Court hall had come to her office. It cannot be believed that they had come together with the common object. Her evidence was recorded on 5-10-2015 and the substantive evidence does not show that she knew the accused persons in the past, prior to the date of incident. The panchanama of the spot of incident does not show that any incident had taken place. Thus there is no evidence to show that any unlawful assembly was formed and the accused were the members of this unlawful assembly. The Sessions Court has given acquittal rightly and nothing can be achieved by granting leave to file appeal against the decision of the Sessions Court. So, both the applications are rejected.

Sd/-
(T.V. NALAWADE, J.)

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