

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

CRIMINAL APPLICATION NO. 1432 OF 2017

The State of Maharashtra

..... APPLICANT

V E R S U S

Sadiq Khan s/o Shiraj Khan & Ors. **..... RESPONDENTS**

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Mr. G.O.Wattamwar, A.P.P. for Applicant – State.

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CORAM : V.L.ACHLIYA, J.

DATE : 9th JUNE, 2017

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ORDER :

1. The applicant – State has moved this application seeking leave to file Appeal against the Judgment and Order dated 19/10/2016 passed by the Additional Sessions Judge-9, Aurangabad in Sessions Case No. 183/2010, mainly on the ground that the Judge of the trial court has not properly appreciated the evidence.

2. In order to appreciate the submissions, I have perused the impugned Judgment and Order passed by the trial Court. In my view, there is absolutely no perversity in the Judgment passed by the trial Court and the view taken in the matter is possible view. Respondent Nos. 1 to 5 were charge sheeted for committing the offence u/s 399, 402 read with section 34 of the Indian Penal Code and u/s 4/25 of the Indian Arms Act with allegation that on 04/10/2009 at around 02.15 hrs. on Machhindranath Temple road, near village Mitmita, Taluka and District Aurangabad they were found with preparation of committing dacoity. They were armed with deadly weapons like Sword, knife and articles like chilly powder, hexa blade, cutter, etc. On reliable information, police personnel laid trap and caught accused while they have made preparation to commit dacoity.

3. In order to bring home the guilt to the accused, prosecution has examined five witnesses which includes 3 police personnel and 2 panch witnesses. Both the panch witnesses to alleged seizure have not supported the prosecution. On due consideration of testimony of 3 police personnel, learned Judge of the trial Court acquitted the accused by observing that their evidence is not

sufficient to prove the guilt against accused. The view taken in the matter is a possible view and can not be said to be based upon improper appreciation of evidence. There is absolutely no perversity in the Judgment and Order passed by the trial Court. It is quite settled position in law that in exercise of appellate jurisdiction, the Court is not expected to substitute its own findings to the finding recorded by the trial Court, unless the reasons and findings recorded are perverse and unsustainable in law.

4. In this view, no case is made out to entertain the request to grant leave to file Appeal.

5. In the result, Criminal Application is rejected.

[V.L.ACHLIYA, J.]