

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

CRIMINAL APPLICATION NO. 2194 OF 2016

Smt. Asha Kisan Sathe

...APPLICANT
(Ori. Complainant)

versus

The State of Maharashtra & ors.

...RESPONDENTS

.....
Mr. Nitin B. Suryawanshi, Advocate for applicants
Mr. B.A. Shinde, APP for Respondent No. 1- State
Mr. N.C. Garud, Advocate for Respondents No. 2 to 7-Ori. Accused
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CORAM : K.K. SONAWANE, J.

DATED : 11th JULY, 2017.

Order :-

1. The applicant - original complainant is intending to prefer an appeal against the impugned judgment and order of acquittal of original accused-respondents No. 2 to 7 passed in STC No. 110 of 2005 by the learned Judicial Magistrate, First Class, Ahmednagar for the offence punishable under sections 324, 504 and 506 read with section 34 of the Indian Penal Code (for short "IPC"), *inter-alia*, applicant seeks leave under section 378(3) of the Criminal Procedure Code (for short "Cr.P.C.") to present appeal against acquittal of respondents-accused.

2. It has been alleged that complainant Asha Kisan Sathe approached to the Court of Magistrate and file the complaint under section 200 of the Cr.P.C. on 01-01-2005 that her sister Manda was going to field for grazing the she-goats, and at that time, daughters of accused No. 1 Babasaheb hurled abuses and pelted stones on her

sister-Manda. The complainant rushed there, but daughters of accused No.1 Babasaheb started abusing to her. The complainant made endeavour to give understanding to them. In the meantime, accused No.1-Babasaheb, accused No. 2-Nitin and accused No.5-Vimal Sathe arrived at the spot. They threatened the complainant that they would kill her. The accused picked up the sticks and attacked the complainant. But, complainant rushed towards the house of Bhimraj Sathe and closed the door from inside. Accused No. 1-Babasaheb, accused No. 2 Nitin and accused No. 5 Vimal Sathe made endeavour to break open the door by giving jerk to the door. They gave threats to kill her. Thereafter, she passed on message on telephone to her sister Mangal Dhage. Accordingly, her sister Mangal, and her husband Shankar both arrived in front of the house of Bhimraj. The other witnesses, Kachru Bansi Sathe and Bhausahab Murlidhar Sathe also came to the spot. On seeing the denizens of the locality, the complainant opened the door and came out of the house. But, accused Sudam caught hold her hand and attempted to outrage her modesty. Accused Babasaheb and others assaulted her with sticks. Accused Vimal and Suman attacked her sister Manda by fists and kicks. They were exhorting to kill her. But, witnesses Kachru Bansi Sathe, Bhausahab Murlidhar Sathe and Shankar Sindhu Borde intervened in the fight and extricated the complainant from clutches of the accused. The complainant sustained injuries in the incident of assault. She rushed to the Police Station. Police referred her to Government Hospital for medical treatment. The complainant was hospitalized upto 7th January, 2005 for medical treatment. However, Police did not take

cognizance of her complaint. Therefore, she approached to the Court of learned Magistrate and filed the private complaint.

3. The learned Magistrate appreciated the circumstances and issued process under sections 324, 504 and 506 read with section 34 of the IPC against accused. The respondents-accused appeared and raised objections to the allegations nurtured on behalf of complainant. The learned trial Court proceeded to record the evidence of the complainant before framing of charges. In order to establish prima-facie the allegations, complainant examined herself on oath at (Exhibit-51). In support of her version, complainant adduced the evidence of P.W. 2- Kachru Sathe (Exhibit-59), P.W. 3 Bhausahab Murlidhar Sathe (Exhibit-60) and P.W.4-Shankar Sidhu Borude (Exhibit-62). The P.W.5- Dr. Uttam Laxman Wadhwekar was summoned for evidence before the Court, who examined the complainant medically on 01-01-2005 for injuries sustained by her. He issued medical certificate (Exhibit-68) in favour of the complainant. The respondents-accused preferred to cross-examine the complainant and her witnesses. Thereafter, learned trial Court preferred to frame the charges for the offence punishable under sections 324, 504 and 506 read with section 34 of the IPC and proceeded further for detail trial of the respondent-accused.

4. The learned trial Court appreciated the facts and circumstances on record and arrived at the conclusion that complainant has failed to prove the allegations nurtured against respondents-accused beyond reasonable doubt. Therefore, the learned Magistrate acquitted the respondents-original accused for the charges pitted against them and

passed the impugned judgment and order dated 14th September, 2015, which is subject-matter of present application.

5. The learned counsel for applicant submits that the impugned findings of learned trial Court acquitting the accused are cryptic and slender in nature. The learned trial Court did not appreciate the circumstances on record in its proper perspective. The findings of learned trial Court are erroneous, illegal and required to be set aside. The learned trial Court did not record detail reasons for acquittal of respondents-accused in this case and committed error. The learned counsel submits that the evidence of P.W.1-complainant, P.W.2-Kachru Sathe, P.W.3-Bhausahab Murlidhar Sathe and P.W. 4-Shankar Sidhu Borude proved the incident of assault on the complainant and her sister-Manda with deadly weapon stick. P.W-5 Dr.Wadhwekar, Medical Officer produced the Medical Certificate of the complainant for corroboration. But, the learned trial Court did not appreciate these circumstances in proper manner. According to learned counsel, there were circumstances on record incriminating in nature to bring home guilt of the respondents-accused. The complainant has every hope of success in the appeal. Therefore, he requested to grant leave to present an appeal against, impugned judgment and order of acquittal of respondent/accused passed by learned trial Court.

6. In refutation, the learned counsel for respondents - accused submits that evidence of complainant herself as well as the witnesses examined on her behalf, do not inspire confidence. There are material contradictions and omission in their evidence. All these witnesses were

got up witnesses. They all are also related and interested witnesses in this case. The findings of learned trial Court are just, proper and reasonable one. According to learned counsel, star witness Bhimraj was not examined by the prosecution. No independent witnesses came forward to support the case of the complainant. He further submits that it would be an futile efforts, in case, the leave is granted. Therefore, he requested not to nod in favour of complainant and prayed to reject the application.

7. I have given anxious consideration to the rival submissions advanced on behalf of both sides. I have also perused the record and proceedings of the learned trial Court. Admittedly, the complainant has instituted a private complaint against respondents-accused for the incident of assault occurred on 01-01-2005. According to complainant, after the alleged incident of assault in the field as well as at the house of Bhimraj Sathe, she rushed to concerned Police Station and filed report. Thereafter, she was referred to Government Hospital for medical treatment. She was hospitalized upto 7th January, 2005. The Medical Officer, who examined the complainant, produced the medical certificate (Exh.68) on record.

8. At this juncture, I find substance in the contentions putforth on behalf of respondent-accused that, in case, the complainant had filed the report of alleged incident to the police, there would have been at least registration of N.C. under section 155 of Cr.P.C. by the police. But, there was no record about the same. It has been alleged that Police did not take cognizance of her report and consequently, she

approached to the learned Magistrate by filing private complaint. There is no controversy that no offence was registered by the police against respondents-accused at the instance of complainant. Moreover, no any document produced on record to show that the complainant attempted to ventilate her grievance against accused to police. It must affect the probabilities of the occurrence of alleged incident.

9. The alleged incident occurred on 1st January, 2005, thereafter she approached to Police and filed the report but police did not take cognizance and after efflux of colossal period of near-about two months, the complainant preferred the private complaint to redress grievance against respondent-accused. The conduct and demeanour to file present complaint at belated stage after efflux of near about two months of the incident, proved fatal to the case of complainant. In addition there are no documents on record, to show that she had approached to the police and filed the report of incident against respondent/ accused. Therefore, I do not find any perversity and infirmities in the conclusion drawn by learned trial court. It would also seen that alleged incident of beating was occurred in front of house of Bhimraj Sathe located in the residential area. There were denizens who must have received the opportunity to watch the spectacle. But, no any independent witness from the locality came forward to support the version of the complainant in this case.

10. The attending circumstances demonstrate that the witnesses, P.W.-2 Kachru Sathe and P.W. 3 Bhausahab Sathe all are related and

interested witness in this case. The evidence of independent witness is not available to corroborate the testimony of complainant. In such circumstances, it would be unsafe to fasten the guilt on the accused-respondent on the version of related and interested witnesses. The complainant made endeavour to produce her injury certificate on record issued by the P.W. 5 Dr. Wadhwekar. Medical Certificate adumbrates that there were injuries like abrasion, swelling and contusion on the left thigh of the complainant. During the cross-examination it was suggested to the complainant that she received these injuries accidentally after her fall in the gutter. The Respondent/accused denied about occurrence of such incident as alleged by the complainant. In contrast it has been alleged that the complainant filed the impugned complaint on making false and fabricated accusation against respondent accused due to inimical terms against them.

11. Overall scrutiny of the evidence adduced on record on behalf of complainant, *prima facie*, reflects that the findings expressed by learned trial Court for acquittal of respondents-accused are just, proper and reasonable one. There was apparently no error or infirmity on the face of impugned judgment and order absolving the accused for the charges pitted against them. Ultimately, chances of conviction in the appeal are bleak. In case, the leave is granted to present the appeal, against impugned judgment & order of acquittal of accused, it will be an futile efforts and dissipate precious time of this Court. *Prima faice*, it appears that evidence on record on behalf of complainant is not

sufficient to nail respondent-accused in this case. In such circumstances, there is no propriety to grant leave to present the appeal against impugned judgment and order of acquittal of respondents-accused. The application being devoid of merits and deserves to be rejected.

12. In view of aforesaid discussion, leave to present appeal against the findings of acquittal of respondents-accused by the learned trial Court, is hereby refused. The application stands rejected and disposed of accordingly. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK