

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

19 CRIMINAL APPLICATION NO. 2072 OF 2017

THE STATE OF MAHARASHTRA

VERSUS

ASHOK BANSI DESHMUKH & ORS.

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Mr. S.Y.Mahajan, A.P.P. for Applicant - State.

Mr. V.H.Pathade h/f Mr. V.S.Undre,

Advocate for R – 1 to 7.

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CORAM : V.L.ACHLIYA, J.

DATE : 17th JULY, 2017

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ORDER :

1. The applicant - State has moved this application seeking leave to file Appeal against the impugned Judgment and order of acquittal dated 07/01/2017 passed by the Judicial Magistrate First Class, Bhoom, district Osmanabad.

2. Heard the learned A.P.P. for applicant – State and learned counsel for respondent Nos. 1 to 7.

3. In nut-shell, it is the contention of the learned

A.P.P. that the Judgment and order passed by the trial Court is not sustainable in law. By referring the testimony of the informant and the Medical Officer, learned A.P.P. submits that the prosecution has proved the guilt of the accused beyond reasonable doubt. It is pointed out that the reasons recorded by the trial Court to discard the testimony of the nephew, who is otherwise an injured witness, are not legally sustainable. It is contended that the testimony of the informant finds corroboration from the witnesses.

4. On the other hand, learned counsel for respondent Nos. 1 to 7 supported the Judgment and order passed by the trial Court. He submits that the Judgment and order passed by the trial Court is well reasoned and based upon due appreciation of evidence. He submits that the view taken in the matter can not be said to be perverse and contrary to law. He submits that there was rivalry in the village. The accused were belonging to the group of Annasaheb. The informant/complainant had lodged complaint against Annasaheb. Only for the reason that the accused belong to the group of rival of the complainant, false case came to be registered against the accused.

5. Having appreciated the submissions advanced in the light of reasons and findings recorded by the trial Court, I am of the view that arguable case is made out to be considered in the Appeal. The complainant who is injured witness deposed as per the prosecution case. The testimony of the complainant finds due corroboration from the medical evidence. Although the Court has observed that there was 40 hours delay in lodging the complaint, the Court has failed to take into account that the complainant was lying in the hospital and complaint was recorded by police while lying in the hospital. It is not a requirement of law that in each and every case, there should be independent witness. Each of the case required to be examined on its own merit. I am, therefore, of the view that arguable case is made out to entertain the Appeal. Hence, the application is allowed. Leave granted to file Appeal.

6. List the Appeal for admission on 26/07/2017.

[V.L.ACHLIYA, J.]