

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

**CRIMINAL APPLICATION NO. 3312 OF 2016**

**THE STATE OF MAHARASHTRA  
VERSUS  
MADHAV S/O DATTRAM CHOUTMAL AND OTHERS**

...  
APP for Applicant : Mr. S. P. Tiwari.  
Advocate for Respondent Nos. 1 to 4 : Mr. Gajanan Kadam.

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**CORAM : P. R. BORA, J.**  
Dated: August 22, 2017

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PER COURT :-

The State has preferred the present application, seeking leave to appeal against the Judgment delivered by the II Adhoc Additional Sessions Judge at Nanded on 11<sup>th</sup> March 2016 in Special Case (Atrocity) No. 10 of 2015.

02. The respondents i.e. original accused were prosecuted by the aforesaid case for the offence punishable under Sections 143, 147, 323, 452, 504 of Indian Penal Code and Section 3(1)(x) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989. The alleged incident was stated to have occurred on 7<sup>th</sup> March 2015. It was the case of the prosecution that on 7<sup>th</sup> March 2015 at about 8.30 p.m. the accused persons stationed their Car in front of the house of the informant, raised volume of the Car Deck to its extreme and when they were prevented, and were asked for lowering the voice, the altercation took place and it was the

complaint of the informant that the accused persons entered into their house, beat the informant, her husband with stick and also threw chilly powder into their eyes and also abused them on their caste. The First Information Report was therefore, lodged and the victims were sent for their medical examination. After completing the investigation, the charge-sheet was filed.

03. In order to prove the charges levelled against the accused, nine witnesses were examined by the prosecution. The learned Special Court has, however, held the evidence so adduced to be unbelievable for convicting the accused persons and has eventually recorded acquittal of all the accused. Aggrieved thereby the State intends to prefer the appeal and therefore, leave is sought by filing the present application seeking leave to appeal. Shri Tiwari, learned APP appearing for the applicant State, submitted that sufficient evidence was adduced before the Special Court to prove the guilt of the accused as was alleged against them, however, the Special Court has failed in appreciating the evidence so adduced by the prosecution which has resulted in unmeritorious acquittal of all the accused. The learned A.P.P. further submitted that the F.I.R. was promptly lodged and the victims were immediately sent for medical examination and the medical evidence supports the allegations made by the complainant as about the beating to the victims by the accused persons and the act of throwing chilly powder in the eyes of some of the victims by the accused persons. The learned A.P.P. further submitted that in the

seizure panchanama also, the existence of chilly was noticed. The learned APP further submitted that even the Medical Officer has admitted that chilly powder was noticed on the clothes of the victims, when he examined the said victims after they were referred by the police authorities for their medical examination. The learned A.P.P. further submitted that though there was sufficient evidence on record, by drawing some unwarranted inferences the Court has wrongly acquitted the accused persons. The learned APP therefore, prayed for allowing the present application and to hear the application on merits.

04. The learned Counsel appearing for the respondent i.e. original accused supported the impugned judgment. The learned Counsel submitted that the Special Court has given elaborate reasons for not accepting the evidence of the prosecution. The learned Counsel submitted that a categorical finding is recorded by the Special Court that the evidence so adduced by the prosecution was untrustworthy and cannot be depended upon for holding the accused guilty for the offences charged against them. The learned Counsel submitted that the Special Court has also observed that material improvements were made by the witnesses as about the weapons used in the commission of the alleged offence and as such also the evidence of the prosecution does not inspire confidence. The learned Counsel inviting my attention to the observations made by the Special Court in para Nos. 32 and 33 of the Judgment while summarizing the entire evidence, submitted that the same is

sufficient to reject the application filed by the State. The learned Counsel, therefore, prayed for rejecting the application.

05. I have carefully perused the impugned judgment and the evidence on record. Apparently, it does not appear to me that the Trial Court has committed any error in acquitting the accused for lack of sufficient evidence against them. On perusal of the evidence it is found that the Trial Court has rightly observed that some material improvements and contradictions were apparently noticed in the evidence of these witnesses. The medical evidence, though was there, merely on the basis of said evidence, complicity of the accused cannot be said to have been proved since there was no independent evidence in that regard. In para Nos. 32 and 33 to which my attention was invited by the learned Counsel for the respondents, the Trial Court has made the following observations :

"32.Considering the evidence discussed above I am of the opinion that the evidence of the informant as well as her husband Hanmant Banduke (PW-2) does not inspire confidence due to the material improvements in their version. There is no independent corroboration to their testimony. So looking into the fact of prior enmity between them as well as considering material improvements made by them it is undesirable as well as improper to solely rely on their testimony. Seizure of articles and stick used in the offence is doubtful. Therefore, case of the prosecution does not inspire confidence.

33. This case is under SC/ST (Prevention of Atrocities) Act, 1989. Investigation of the case is entrusted to the Superior Police Officer i.e. Dy.S.P. The reason behind it is that an innocent person should not be implicated in a false case as well as the guilty should not be escaped. Taking into account the object of entrusting the investigation with the Superior Police Officer, he is expected to make fair and proper investigation. In the case in hand, as noted earlier the root cause or the immediate cause of the alleged incident is volume of the Car deck. The IO has not made efforts to see whether accused own any Car or they used other's car. So

user of the Car by the accused itself is not proved by the prosecution. The IO has not taken any efforts to record the statements of immediate neighbor who would have witnessed the incident. There is inordinate delay for visiting the spot and seizure of Chilly powder as well as iron latch. In such inordinate delay plantation of Chilly powder and iron latch cannot be ruled out. So also as per the evidence of panch witness and seizure panchanama Exh. 40 stick is seized in the Police Station. All these aspects create great doubt and suspicion about the prosecution case. So prosecution failed to prove either of the charge against any of the accused. Therefore, all the accused deserve to be acquitted. Accordingly, I answer point Nos. 2 to 7 in the negative."

06. In view of the observations made and after scrutiny of the evidence on record, it does not appear to me that the prosecution has made out any case for granting leave to prefer appeal.

07. In the result, the following order is passed :-

**O R D E R**

Application is rejected.

sd/-  
(P. R. BORA)  
JUDGE

shp