

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

CRIMINAL REVISION APPLICATION NO. 268 OF 2004

Bhagwan Narayan Deshmukh
Age: 53 years, Occu.: Business,
R/o Dawala, Tq. Vaijapur,
Dist. Aurangabad.

..APPLICANT

VERSUS

1. State of Maharashtra
2. Ambadas Namdeo Lande
Age: 38 years, Occu. Agri.,
3. Dnyandeo Namdeo Lande
Age: 56 years, Occu.: Agri.,
4. Machindra Namdeo Lande
Age; 41 years, Occu.: Agri.,
5. Sahebrao Namdeo Lande
Age: 48 years, Occu.: Agri.,
6. Baburao Laxman Thombare
Age: 51 years, Occu.: Agri.,

Respondent Nos. 2 to 6
R/o Khambala, Tq. Vaijapur,
Dist. Aurangabad.

7. Karbhari Laxman Thombare
Age: 66 years, Occu.: Agri.,
R/o Purangaon, Tq. Vaijapur,
Dist. Aurangabad.

..RESPONDENTS

....
Mr. V.R. Dhorde, Advocate for applicant.
Mr. B.A. Shinde, A.P.P. for Respondent No.1 – State.
....

CORAM : T.V. NALAWADE, J.
DATED : 25th JANUARY, 2017

ORAL JUDGMENT :

1. The application is filed to challenge the judgment and order dated 27th April, 2004 of S.C.C. No. 389 of 1997 which was pending in the Court of Judicial Magistrate, First Class, Vaijapur. Respondents – accused are acquitted of offences punishable under Sections 447, 504 and 506 read with 34 of the Indian Penal Code. Heard learned Counsel for applicant – first informant and learned A.P.P. Nobody turned up for respondents – accused.

2. The incident in question took place on 28th October, 1995 at about 11.00 a.m. in the field bearing Gut No. 26. It is the case of complainant that this field is in his possession and accused have no concern with his land. It is his case that at relevant time, he was sowing jawar crop and to prevent him from doing so, all accused came there. He made allegation that all accused gave abuses and gave threats of life and they were armed with knife and axe. He made allegation that when

they picked up the quarrel, some persons came there and they witnessed the incident. On the same day, he approached police but on the basis of application given by him, on that day no crime was registered. It appears that on the next day police recorded one more statement which was treated as F.I.R. and then investigation was made. Spot panchnama was prepared, statement of witnesses were recorded and charge-sheet came to be filed against in all six accused persons. The accused pleaded not guilty and case was tried as regular warrant case and charge was framed.

3. The prosecution has examined complainant and two witnesses i.e. P.W. 2 and P.W.3. Prosecution could not prove the spot panchnama and prosecution has not examined the investigation officer.

4. The Trial Court has given acquittal on the following grounds:-

(i) In the written application given on the date of incident, names of some accused and some witnesses were not mentioned. When this application could have been treated as F.I.R., additional statement which was recorded on the next date of the incident was treated as F.I.R.

(ii) There was civil dispute between family of first informant on one side and two ladies owners of the lands on the other side in respect of this land and accused persons are relatives of one of the two ladies – Vandanabai.

(iii) It is the case of first informant that under the agreement of sale he is in possession of the land but he has not become owner of the land and as there is civil dispute, he cannot claim that relatives of Vandana, who were at the instance of Vandana there had committed the offence of criminal trespass.

(iv) There are discrepancies in the evidence given by P.W. 2 and P.W. 3 on one side and the evidence given by first informant on the other side. Two witnesses have not given evidence that threat of life was given by accused. The two witnesses are not taking names of many accused persons. They took names of only two accused persons like Ambadas and Machindra. They deposed that both sides were quarreling.

(v) The case of complainant that accused came there with weapons like axe and knife but they gave only

abuses and threats is not probable in nature.

(vi) The names of many accused were not given by complainant and he had not made specific allegation against any of the accused that particular abuses were given to him.

5. The aforesaid circumstances remained unexplained when learned Counsel for applicant argued the present matter. There is nothing to collaborate the oral evidence given by the complainant in the present matter. There was no injury as there was no assault and even spot panchanama could not be proved by prosecution. The investigation officer also was not examined when the application given on date of incident could have been treated as F.I.R.

6. In view of aforesaid circumstances, this Court holds that view taken by the Trial Court is possible view and it is not possible to interfere in the decision given by the Trial Court. In the result, revision application stands disposed of as dismissed.

(T.V. NALAWADE, J.)

SSD