

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.50 OF 2017**

The State of Maharashtra ...Applicant

Versus

Mantri Chandrasha Saudagre & Ors.Respondents

WITH

CRIMINAL APPLICATION NO.51 OF 2017

The State of Maharashtra ...Applicant

Versus

Prakash Sharnappa Upase & Ors. ...Respondents

...

Mrs. M.R. Tidke, APP for the Applicant-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 08th NOVEMBER, 2017

P.C. :

Prosecution herein has filed these applications to challenge the judgment and order dated 15th November, 2016 in Criminal Appeal No.64 of 2011 and Criminal Appeal No.60 of 2011 whereby the learned Additional Sessions Judge, Solapur has acquitted the accused in the said case for offences punishable under Sections 143 and 147 of the IPC.

2. The Respondents were accused in Criminal Case No.914 of

2008. They were prosecuted for committing offence under Sections 143, 147, 323, 504 and 506 r/w. Section 149 of the IPC. By judgment dated 31st October, 2011 the learned Magistrate held these Respondents guilty of offences under Sections 143, 147 r/w. 323 and 149 of the IPC and acquitted them in respect of the other offences. Aggrieved by the said order the Respondents challenged this conviction in the aforesaid appeals filed before the learned Additional Sessions Judge, Solapur. By judgment dated 15th November, 2016 the learned Additional Sessions Judge allowed the criminal appeal and acquitted the aforesaid Respondents in respect of the offences under Sections 143, 147 and 323 r/w. 149 of the IPC. Being aggrieved by the said acquittal the State has preferred these applications seeking leave to challenge the impugned judgment of acquittal.

3. Heard Mrs. M.R. Tidke for the Applicant-State. None present for the Respondents.

4. Perused the records. The accusations against the Respondents were that on 11th June, 2008 at 7.00 a.m. they formed

unlawful assembly with a common object of assaulting PW2-Indubai Birajdar. It was alleged that in furtherance of their common object these Respondents assaulted said PW2-Indubai and caused simple hurt.

5. The case of the prosecution was based solely on the testimony of PW2- the injured witness. Her testimony reveals that there is civil dispute between her family and the Respondents over the same paddy field wherein the alleged incident occurred. The evidence on record indicates that the Respondents herein have purchased the field wherein the alleged incident had occurred and that her son had filed a suit for cancellation of the deed. Her evidence indicates that on the relevant date she had gone to the paddy field and the Respondents had come to the paddy field and questioned her about her presence in the paddy field. The evidence of PW2, as rightly held by the learned Sessions Judge, Solapur, does not prove that the Respondents had entered the said paddy field with an intention of committing any other offence but it appears that their entry in the paddy field was to question the presence of PW2 in the paddy field. The evidence on record does not disclose the essential ingredients of “unlawful

assembly” as defined under Section 141 of the IPC.

6. The evidence of PW2 also suffers from material discrepancies. There are several improvements and omissions. Furthermore, the evidence of PW2 is not supported by any independent witness. Considering the above facts and circumstances, in my considered view the findings of the learned Sessions Judge are based on evidence on record. The view taken by the learned Sessions Court is probable and does not warrant any interference.

7. Hence, the Applications are dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)