

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 389 OF 2017
(for Leave to Appeal)**

Jitendra Meghui Sehra

....Applicant

Versus

The State of Maharashtra & Ors.

....Respondents

Mr. B.M. Thakur i/b. Mr. Rahul Arote for the applicant.

Mrs. N.S. Jain, APP for Respondent No.1/State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 31st OCTOBER, 2017

P.C. :

1. By this application, the applicant who is the first informant, has sought leave to challenge the judgment dated 23rd August, 2017, whereby the Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai had acquitted the respondents/accused for offences under Sections 324, 427, 506(2) r/w. section 34 of the Indian Penal Code vide section 248(1) of the Criminal Procedure Code.

2. Heard the learned counsel for the applicant and the learned APP for the State. Perused the records. Considered the submissions advanced by the learned Counsels for the respective parties.

3. The record reveals that the respondents were charged for committing the aforesaid offences. It was the case of the prosecution that the respondents/accused, on 18th February, 2009, at about 09:30

p.m. formed an unlawful assembly with a common intention of assaulting the first informant-Jitendra Sevra and his brother Hasmukh. It is the case of the prosecution that the respondent no.2 Suryakant @ Suru Sitaram Ghag had assaulted Hasmukh with a chopper whereas, the respondent nos.3 and 4 had assaulted the first informant-Jitendra Sevra and gave fist blows.

4. The evidence on record clearly indicates that the accused had taken specific plea that they too were assaulted by the first informant and his brother and that the respondent no.2-Suryakant had sustained injuries and he was admitted in the hospital. In this regard, PW6-Dr. R.M. Shetty had admitted that the accused no.1-Suryakant had sustained injuries and that he was discharged on 21st February, 2009. The Investigating Officer has also admitted that he had visited Rajawadi Hospital. He has stated that the respondent no.2-Suryakant was admitted in the said hospital and that he had stated before him that he was assaulted by the first informant and his brother Hasmukh.

5. The first informant had denied having assaulted respondent no.2-Suryakant. Nevertheless, fact remains that the respondent no.2-Suryakant had sustained injuries. The prosecution has not explained the injuries sustained by said Suryakant and has thus not proved genesis of the incident.

6. It is also to be noted that the prosecution had examined PW4 – Navin Jain, who is stated to be an independent witness. He has

admitted that his statement was recorded by the police about four days after the incident. The prosecution had not explained the delay in recording his statement. The case of the prosecution is that the weapon of offence was recovered from the place of the incident on 19th February, 2009. The Investigating Officer stated that the said weapon was stained with blood. The statement is not corroborated by prosecution witness.

7. The evidence adduced by the prosecution suffers from material discrepancies. The evidence on record does not disclose the essential ingredients of the offence. Hence, the learned Magistrate was justified in acquitting the respondents/accused. The findings of the learned Judge are based on the evidence on record and are neither illegal nor perverse.

8. Under the circumstances, the view taken by the learned Magistrate is probable. The order does not warrant interference. Hence, application for leave to appeal is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)