

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application APPP No. 247 of 2016

(Vasant Mahadeorao Jawalekar...Vs.. Sunil Soma Nehare & Anr)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. A.H. Lohiya, Counsel for respondent 1.
Mrs. Mayuri Deshmukh, APP for respondent 2.

CORAM : ROHIT B. DEO, J.

DATE : 21.08.2017.

None present for the applicant /
appellant even on second call.

The application seeks leave under
section 374(4) of Criminal Procedure Code to
prefer an appeal challenging the judgment
and order dated 5.3.2016, in Summary
Criminal Case 209 of 2014 passed by the
learned Judicial Magistrate First Class, Ashti,
acquitting the non-applicant for offence
punishable under sections 447 read with
section 506 of the Indian Penal Code.

I have given my anxious

consideration to the facts and evidence as can be culled out from the judgment. The case of the complainant before the learned Magistrate was that the accused who is a cowherd, drove his cattle in the field of the complainant and crops worth Rs. 2 lakh were damaged. It is alleged in the complaint that at the relevant time PW2 Pandurang Marotrao Nikam was "Sokari" of the complainant, who is examined as PW2 confronted the accused. The complaint alleges that the accused threatened the said Pandurang.

The complainant admittedly was not present at the spot. His evidence is hearsay. The case of the complainant is entirely based on the evidence of "Sokari" - Pandurang Marotrao Nikam who is examined as PW2.

The learned Trial Court has carefully and minutely discussed and appreciated the oral testimony of PW 2 in paragraph 8 onwards of the judgment. The learned

Magistrate has recorded a finding that the oral testimony of PW 2 is not trustworthy nor reliable. The learned Magistrate has recorded a finding, and rightly, so that the testimony of PW 2 is marred by contradictions and improvements. The version of PW2 is also inconsistent with the verification statement recorded on oath at the stage of issuance of process.

The view taken by the learned Magistrate is an eminently plausible and possible view and is certainly not perverse. I do not think that the applicant has made out a case for grant of leave under section 378(4) of Criminal Procedure Code.

The application seeking leave to appeal is rejected and the appeal is consequently disposed of.

JUDGE

Belkhede, PA