

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

CRIMINAL WRIT PETITION NO.1668 OF 2017

Bajrang Vithal Hake,
Age : 52 years, Occu : Agril.,
R/o Prashant Nagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through Police Station
Ambajogai, Dist. Beed.
2. Sambhaji Digambar Kachgude,
Age : 40 years, Occu : Agril.,
R/o Ambajogai, Tq. Ambajogai,
Dist. Beed.
3. Bandu Vikram Shelke - (*Abated*) ... **Respondents**

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Mrs. M.A.Kulkarni, Advocate for Petitioner.
Mr. A.R.Kale, APP for Respondent-State.

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CORAM : MANGESH S. PATIL, J.
DATE : 23.07.2018

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is taken up for final hearing.

2. The petitioner is the original accused in Regular Criminal Case No.40 of 2005 which was pending before the Judicial Magistrate First Class, Ambajogai facing charge for the offences punishable under Sections 326, 324, 323, 504, 506 read with Section 34 of the IPC. By the judgment and order dated 10.07.2013, the learned Magistrate convicted him for the offences punishable under Section 324 and 323 of the IPC and sentenced him to suffer R.I. for three years and also imposed a fine of Rs.6,000/- in default he was to suffer six months of R.I. However he was acquitted of the rest of the charges.

3. Being aggrieved and dissatisfied with the conviction the petitioner has preferred Criminal Appeal No.37 of 2013 before the Sessions Court at Ambajogai. During the course of hearing, he submitted an application (Exh.24) and sought to produce a certified copy of judgment and order passed in a civil proceeding by invoking the powers of the Court under Section 391 of the Cr.P.C. The learned Judge rejected the application.

4. Being aggrieved, the petitioner is before this Court seeking to quash and set aside the order passed by the learned Additional Sessions Judge and to allow his application (Exh.24) filed in Criminal Appeal No.37 of 2013.

5. The learned advocate for the petitioner submits that since the defence is that the dispute arises out of a civil litigation, the petitioner wanted to produce a copy of the judgment passed in a civil suit in respect of the disputed land which is a genesis for the alleged incident. She further submits that whether the document is relevant or otherwise could have been gone into and left to be decided by the learned Additional Sessions Judge. However it was not appropriate for him to have shut the doors at the threshold. No harm would have been caused to the other side that is the prosecution or complainant if the copy of the judgment was allowed to be produced. Still the learned Additional Sessions Judge has ignored this vital aspect and has flatly refused to take on record the certified copy of the

Judgment. The impugned order is illegal and it may be quashed and set aside and the copy of the judgment may be allowed to be produced.

6. The learned APP strongly opposes the Petition. He submits that apart from the fact that the document was already in possession of the petitioner and was not produced during the course of trial, even the application (Exh.24) moved by him is absolutely silent as to the manner in which the contents of the judgment and order would be relevant for deciding the appeal. He would further point out that the learned Additional Sessions Judge has specifically noted that it was an appeal against conviction of the petitioner for an offence against body and even if there was some dispute of a civil nature in the form of civil suit, that would not obliterate the incident which stands proved on the basis of the evidence. Therefore, the writ petition may be dismissed.

7. Perusal of the application moved by the petitioner before the learned Additional Sessions Judge would

clearly show that the decision sought to be relied upon was already there and petitioner could have produced copy of that judgment and order while the trial was going on. No reasons are coming forth as to why no such attempt was made by the petitioner during the pendency of the trial.

8. Apart from such state of affairs even the application is absolutely silent as to in what manner the contents of the judgment would have enabled the learned Additional Sessions Judge or to have facilitated him in deciding the appeal.

9. Again, taking into account the fact that it is only an appeal against conviction of the petitioner for the offences punishable under Sections 324 and 323 of the IPC which are the offences against body, assuming for the sake of arguments that there was a civil dispute between the parties that is the complainant and the petitioner which had culminated in a decision in latter's favour, would have enabled the learned Additional Sessions Judge to decide the appeal. If the offence

against body stands proved on the basis of the evidence before the Magistrate, presence of such dispute of a civil nature between the parties would have no relevance and was certainly would not have influenced the judgment in appeal.

10. Thus in any event, the request made by the petitioner to the learned Additional Sessions Judge to produce a copy of the judgment was liable to be dismissed for the reasons mentioned above and no fault can be found with the impugned order.

11. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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vmk/-