

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

**CRIMINAL APPLICATION NO.22 OF 2019
(Condonatin of delay)**

**ALONGWITH
CRIMINAL APPLICATION NO. 493 OF 2019
(Leave to file Appeal)**

**IN
CRIMINAL APPEAL NO. OF 2019**

Balkrushna Laxman Kolte Applicant

Vs.

Subhash Parshram Jagtap & Ors. Respondents

Mr. Digvijay Patil i/by Mr. Rahul S. Kate for the Applicant.
Mr. V.V. Gangurde, APP for the State.

**Coram : NITIN W. SAMBRE, J.
Date : 28th November 2019**

P.C.:

1. For the reasons disclosed in the application, delay stands
condoned. The application is allowed.

(NITIN W. SAMBRE, J.)

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1. This application is for grant of leave as the respondents nos. 1 to 9- accused were acquitted by the judgment impugned delivered by the learned Judicial Magistrate, First Class, Baramati on 26th March, 2018.

2. The prosecution case is, Plot no. 334/3 (Old) 712 (new) owned by one Maruti Ramji Kolte, grandfather of the applicant/

complainant. It is claimed that said Maruti Ramji Kolte died in the year 1943 without partitioning the land in question.

3. The respondents nos. 1 to 9 -accused, inspite of the fact that they were having knowledge of death of Maruti Kolte, on 31st May, 1998 passed a resolution thereby resolving that the aforesaid property was gifted by deceased Maruti to the Gram Panchayat. Gram Panchayat has developed the same for the construction of Gram Panchayat office. As such, the aforesaid fraudulent act of the accused prompted the complainant to lodge the complaint resulting in registration of Crime under Sections 420, 427, 468, 471, 504, 109, 120 read with 34 of the Indian Penal Code.

4. The submissions are, from the overall evidence on record, it could be easily inferred that Maruti Kolte, grandfather of the applicant/ complainant died way-back in the year 1943. That being so, the resolution dated 31st May, 1998 passed by the accused, thereby accepting gift from Kisan Hari Kolte and Sarjerao Kolte is without any legal basis as same is by practising fraud. He would further urge that if

the resolution is set aside, still the judgment of Civil Court is binding on the criminal court and that being so the applicant's conviction ought to have been ordered.

5. Learned APP assisted the Court in analysing the evidence and the findings recorded by the learned Magistrate.

6. The death of Maruti wayback in the year 1943 is not established by the prosecution by bringing on record his death certificate or by adducing any oral evidence in support thereon.

7. Apart from above, the factum of the respondent nos. 1 to 9-accused having knowledge of giving the land to the Gram Panchayat by a resolution dated 31st May, 1998 was also not proved by the prosecution as act of passing of alleged resolution and signatory to it was not proved by the prosecution.

8. Though the learned counsel has invited attention of this Court to the very language of the resolution reflected in the documents, it is noticed that only copies of the resolution were produced. It was expected from the prosecution to prove the contents therein, but the prosecution has failed to prove the same.

9. The fact remains that the resolution in question is already set aside at the level of revenue authority as also in the Civil Court.

10. There is no material to infer that there was *mens rea* on the part of the respondent-accused so as to draw benefit from the illegal criminal act.

11. That being so, leave refused.

(NITIN W. SAMBRE, J.)