

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

**CRIMINAL APPLICATION NO.483 OF 2019
(Leave to file Appeal)**

Mahesh Tukaram Kadam Applicant

Vs.

The State of Maharashtra & Ors. Respondents

Mr. Vishwajeet V. Mohite i/by Mr. Siddhart R. Karpe for the Applicant.
Mr. S.V. Gavand, APP for the State.

Coram : NITIN W. SAMBRE, J.

Date : 22nd November 2019

P.C.:

1. Heard.
2. The learned Judicial Magistrate First Class, Baramati in Regular Criminal Case No. 318 of 2014 vide judgment impugned dated 28th May, 2018 acquitted respondent nos. 2 to 15 -accused. As such, this application by the original complainant.
3. Pursuant to the complaint dated 10th July, 2014, an offence punishable under Sections 143, 147, 148, 427, 447, 504, 506 read with 149 of the Indian Penal Code came to be registered against the

respondents-accused. Amongst other, the allegation against the respondents-accused in a complaint are, the applicant and complainant were holding adjacent agricultural lands. The fencing, which was installed by the applicant came to be removed by causing criminal trespass by the respondents-accused on January 8, 2014. As such the offence in question.

4. After the accused were charge-sheeted, the prosecution in support of its case examined in all 7 witnesses and also relied on certain documentary evidence viz. spot panchanama, statement of the complainant, 7/12th extract of the properties in question and recovery panchanama.

5. Though the incident had occurred on 8th January, 2014, the complaint came to be lodged on 16th July, 2014. The F.I.R. at Exhibit 116 and complaint at Exhibit 118 speaks belatedly lodging of the F.I.R., Learned counsel for the applicant would urge that the delay is caused because of intervention by the respected persons from the village, who promised to settle the matter amicably. Since, the same was not

materialised, a delay of about six months has caused in preferring the F.I.R. in question. Attention of this Court is invited to the testimony of the complainant, who was examined as PW-6 and also from the documents at Exhibits 116 and 118 i.e. F.I.R. and copy of the complaint. Learned counsel would urge that the testimony of witnesses, PWs 4,5 and 6 in categorical terms establishes about commission of the crime and as such the Court below has committed an error in acquitting the respondents-accused.

6. The learned APP assisted the Court in drawing appropriate conclusion.

7. The respondents-accused came to be acquitted by the order impugned dated 28th May, 2018. Amongst other the reasons which formed to be the basis for acquittal is unexplained delay of six months in lodging the F.I.R. Perusal of the testimony of PWs 4, 5 and 6 gives contradictory version as to the time and place of lodging F.I.R. by the complainant or these witnesses. No convincing explanation has come forth in their deposition, to infer that the delay in lodging F.I.R. was bonafide.

8. The case of the complainant is that the accused persons conspired, formed an unlawful assembly and committed trespass thereby causing damage to the barbed wire fencing installed by the complainant.

9. The Court below noticed from the evidence of PW. 4, 5 and 6 who are claiming to be an eye witnesses are unable to narrate specific role played by each of the accused in commission of crime. It has come in the testimony of PW. 5 that parties are already litigating before the Civil Court and suits and counter-suits are pending against each other.

10. That being so, the view expressed by the learned Magistrate of acquitting the respondents-accused is a possible view, being refused.

(NITIN W. SAMBRE, J.)