

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

CRIMINAL REVISION APPLICATION NO.133 OF 2020

Raju s/o Ramanna Dasri and another

Vs.

State of Maharashtra Through Police Station, Wanjari, Dist. Yavatmal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. A. Mardikar, Advocate for applicants.

Ms. Mayuri Deshmukh, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/04/2022

Heard Mr. Mardikar, learned counsel for the
applicants and Ms. Deshmukh, learned APP for
non-applicant/State.

2. The application challenges the judgment dated 12.01.2010 passed by the learned Judicial Magistrate, First Class, Wani whereby the applicants have been convicted under Section 447 read with Section 34 of the Indian Penal Code and sentenced to suffer simple imprisonment for two months each and so also convicted for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code and sentenced to suffer simple imprisonment of six months each (page 25), which has been modified by the learned Sessions Court by the judgment dated 18.12.2020 by maintaining the conviction under Section 447 of the Indian Penal Code, however, acquitted the applicants of

the offence under Section 506 of the Indian Penal Code.

3. Mr. Mardikar, learned counsel for the applicants submits that the judgments on the face of it, suffer from the perversity of considering material documents, which was not proved as per law. He submits, that a case has been claimed that PW 3 - Avinash Namdeorao Wagwatkar was granted mining lease of the Government land bearing Gat No.160 admeasuring 11.72 HR by the Collector, Yavatmal, for extraction of lime stone for a period of 30 years from 13.05.2005 up to 12.05.2035, out of which an area admeasuring approximately 5 Acres is claimed to have been encroached by the applicants, as result of which on a complaint made by PW 3 on 09.06.2006, the Naib Tahsildar PW 4 alongwith the Police bandobast had gone to the spot and removed the encroachment by giving possession receipt to PW 3. Thereafter, the applicants are again claimed to have encroached upon the same portion and sown cotton and tur on the said land. On 14.07.2006 at 4.00 p.m. when PW 3 said to have gone to the leased land, he found again encroachment made by the applicants, who also quarreled with him, abused him and threatened to kill him, as a result, on 15.07.2006, a complaint was lodged, on account of which offence under Sections 447, 504, 506 read with Section 34 came to be registered against the applicants.

4. On behalf of the prosecution, five witnesses were examined. PW 3 is the complainant to whom the lease was given, PW 4 is the Naib Tahsildar, who had on the earlier occasion removed the encroachment and placed the PW 3 in possession of the land in question. PW 5, is the Head Constable, who had gone to the spot of the incident and prepared the spot panchanama. PW 1 is the witness to the spot panchanama and PW 2 is the Supervisor.

5. A perusal of the evidence of PW 3 and 4, who are the material witnesses, indicates that though they have deposed that the aforesaid land of Survey No.160 was given on lease; there was encroachment on an earlier occasion which was removed by the PW 4, who had handed over the possession to the PW 3, however, none of these documents, in original have been placed on record. The evidence of PW 3 indicates that he has only proved the report at Exh. 47 and the printed FIR at Exh.48 and nothing else. All other documents placed on record have been marked as articles, as they had not been proved. Similar is the position, with the PW 4 - Devidas Khandare, who though states that the land in question was measured by the T.I.L.R., who found encroachment and after removing it, had placed it in possession of PW 3, however, neither the T.I.L.R. measurement report nor the possession receipt have been

proved by him. Thus, the entire set of documents necessary to demonstrate lease being given to the PW 3; the extent of area of the lease, its fixed boundaries, the alleged encroachment – report of the T.I.L.R.; the possession receipt, all have not been proved on record, and they have been marked as articles in absence of the originals. This being the position, the Courts below could not have placed reliance upon these documents to infer that there was any encroachment made by the applicants on the land of Survey No.160, as the factum thereof, was not established by cogent evidence on record. The judgments of the Court below, merely run on presumption and surmises, which was impermissible, considering the nature of the allegations made and the burden upon the prosecution to establish the factum of encroachment, in which it has in my considered opinion miserably failed considering what has been discussed above. The basic requirement of criminal trespass as defined in Section 441 of the Indian Penal Code is an entry upon the property of another with an intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. In order to establish that, what is material to establish, is the extent of the property to which one is entitled, and the nature and quantum of encroachment made, which could have only been established by proving the lease deed, the extent of area under the lease, its boundaries, the report of the T.I.L.R. and the possession receipt under which

PW 3, is claimed to have been delivered possession of the encroached area by the PW 4. However, none of these documents have been proved on record, as the originals of these documents were never brought in the Court by either PW 3 or PW 4. Thus, the judgment of the learned Judicial Magistrate, First Class, convicting the applicants under Section 447 of the Indian Penal Code cannot be sustained and so also the judgment in appeal rendered by the learned Sessions Court upholding the conviction under Section 447 of the Indian Penal Code also cannot be sustained, as it suffers from the same infirmity, as a result of which, they are hereby quashed and set aside and the applicants are acquitted of the offence punishable under Section 447 of the Indian Penal Code. Their bail bonds stand cancelled. The fine deposited be refunded back to the applicants. No costs.

JUDGE

Sarkate