

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.146 OF 2019

THE STATE OF MAHARASHTRA

VERSUS

ABHIJEET SUBHASH MORE

...

Mr. R.V. Dasalkar, APP for applicant

...

WITH

CRIMINAL APPEAL NO.403 OF 2020

SAMBHAJI RAJABHAU BHOSALE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. B.R. Kedar, Advocate for appellant

Mr. R.V. Dasalkar, APP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.

DATE : 02nd MARCH, 2023

PER COURT :

1 Present application for leave to appeal has been filed by the

State to challenge the acquittal of the respondent by learned Additional Sessions Judge, Bhoom, Dist. Osmanabad in Criminal Appeal No.8/2014 for the offence punishable under Section 326, 324, 506 of the Indian Penal Code, 1860 by Judgment and order dated 20.03.2019, thereby setting aside the conviction of the respondent awarded by learned Judicial Magistrate First Class, Paranda, Dist. Osmanabad in Regular Criminal Case No.154/2003 on 28.08.2013. The learned Judicial Magistrate First Class, Paranda had held the respondent guilty of committing offence punishable under Section 326, 324, 506 of the Indian Penal Code. It will not be out of place to mention here that the original informant has also filed Criminal Appeal No.403/2020 under Section 372 of the Code of Criminal Procedure to challenge the same Judgment and order by the learned Appellate Court.

2 At the outset, it is to be noted that the Trial Court had held the original accused guilty of committing offence, however, in his appeal he has been acquitted.

3 Heard learned APP Mr. R.V. Dasalkar for the applicant in A.L.S. No.146 of 2019 and learned Advocate Mr. B.R. Kedar for the appellant in Criminal Appeal No.403 of 2020.

4 The prosecution had examined in all nine witnesses to bring

home the guilt of the accused. PW 6 Sambhaji Bhosale is the informant and PW 8 Sopan Wadkar is eye witness. However, it has been noticed that PW 1 Jamir Sikandar, PW 8 Sopan Wadkar and PW 2 Atul Thakur, recovery panch, PW 3 Shrikrishna Patil and PW 4 Mahaveer Thakur are the spot panchas and all of them have not supported the prosecution. However, the fact remains is that the testimony of PW 6 informant appears to be corroborative by medical evidence in the form of PW 5 Dr. Anand Mane and PW 9 Dr. Jyoti Kalyani. The prosecution story, it appears that informant had gone to Paranda on 10.11.2003 and after completing his work he was proceeding towards Barshi on motorcycle. When he was near the Paranda Police Station gate around 2.00 p.m., the accused who was on his motorcycle came from behind and gave dash to the motorcycle driven by the informant. The informant was having a pillion rider Atul Kale PW 7. They both fell down. It is further story that after the informant and his pillion rider fell down, informant asked the accused as to why he had given dash and then accused started assaulting the informant by a stick, which was near the motorcycle. It also appears that the informant had also filed accident claim petition for getting compensation i.e. Motor Accident Claim Petition No.282/2004 and had received the compensation. Definitely, merely because he is getting the compensation, that does not mean that the further story is false. The assault is stated to be after the accident. From the medical evidence it can be revealed that the

informant had sustained grievous injury to his stomach. In fact, it was resulted in rupturing of his spleen due to breaking of 10th rib and there was accumulation of blood in the inner lining of the abdominal call and the internal abdominal organs, due to which he underwent surgery. He has taken treatment as an indoor patient from 10.11.2003 to 20.11.2003. Under such circumstance, though certain witnesses appeared to have turned hostile; yet, whether the testimony of PW 6 the informant-appellant and PW 7 Atul Kale together with medical evidence was sufficient to hold the accused guilty will have to be re-appreciated, especially on the documents the Trial Court had held him guilty but on the re-appreciation the Appellate Court has intervened. Whether the intervention of the Appellate Court was justifiable, is a question. Therefore, leave deserves to be granted to the State as well as the appeal filed by the informant under Section 372 of the Code of Criminal Procedure deserves to be admitted. Hence, following order.

ORDER

1 Application for Leave to Appeal by State No.146 of 2019 stands allowed. Leave is granted to the prosecution to file appeal and registry to register the appeal.

2 Both appeals stand **admitted**.

3 In both the appeals, issue notice to respondents. Learned APP waives notice for respondent No.1 in Criminal Appeal No.403 of 2020. Notice of respondent – original accused Abhijit Subhash More in both the appeals is made returnable on 31.03.2023.

4 Action under Section 390 of the Code of Criminal Procedure be taken against the original accused and that should be to the satisfaction of Trial Court i.e. Judicial Magistrate First Class, Paranda, Dist. Osmanabad.

5 Call Record and Proceedings with paper book.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

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