

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.86 OF 2021

The State of Maharashtra,
Through Police Inspector,
Basamba Police Station,
Tq. & Dist-Hingoli

...APPLICANT

VERSUS

Kailas S/o Pandurang Jadhav,
Age-42 years, Occu:Agri.,
R/o-Khanapur Chitta,
Tq. & Dist-Hingoli

...RESPONDENT

...
Mr. S.D. Ghayal A.P.P. for Applicant - State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING ORDER : 2nd NOVEMBER 2023

DATE OF PRONOUNCING ORDER : 10th NOVEMBER 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. The prosecution intends to challenge the acquittal of the respondent by the learned Additional Sessions Judge, Hingoli, District-Hingoli in Criminal Appeal No. 18 of 2025 on 25th August

2021 for the offence punishable under Section 326 of the Indian Penal Code. The accused – respondent was held guilty by the learned Judicial Magistrate, First Class, Court No.2, Hingoli in Regular Criminal Case No. 85 of 2012 on 4th April 2015 and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.50,000/-, in default to suffer rigorous imprisonment for nine months for the offence punishable under Section 326 of the Indian Penal Code.

2. Heard learned APP Mr. Ghayal, appearing for the applicant – State.

3. Learned APP submitted that though the learned Judicial Magistrate, First Class had properly appreciated the evidence, the learned First Appellate Court has wrongly revisited the evidence that was led by the prosecution. Every aspect was considered by the learned trial Judge and merely because two views are possible, it appears that the second view is taken. Under the said circumstance, the present Appeal needs to be admitted by allowing the Application. The acquittal by the learned Additional Sessions Judge has resulted in injustice.

4. At the outset, it is to be noted that the trial Court i.e.

learned Judicial Magistrate First Class had held that the offence has been proved beyond reasonable doubt by the prosecution but the learned First Appellate Court has reversed the said finding. This itself is a good ground for admitting the Appeal.

5. Secondly, it can be seen that the learned trial Judge had awarded compensation to the injured under Section 357(1) of the Code of Criminal Procedure i.e. out of the find amount and the learned First Appellate Court without following the ratio in ***Emperor vs. Chunilal Bnhagwanji, reported in AIR (29) 1942 Bombay 205(1)*** has proceeded further and set aside the said order also without hearing the informant, to whom the compensation was granted. It is therefore, required to be seen, as to whether the First Appellate Court has gone beyond its powers while appreciating the evidence which was before the learned trial Judge and therefore, the Application needs to be allowed, for which following order is passed:-

ORDER

(I) Application stands allowed.

(II) Leave is granted to the prosecution to file Appeal.

(III) Registry to verify and register the Appeal.

(IV) Appeal stands Admitted.

(V) Appellant is directed to make PW-4 Baliram Dagaduji Jadhav, to whom compensation has been granted, as party-respondent. Amendment to be carried out within two weeks.

(VI) In Appeal, issue notice to the respondents.

(VI) Call Record and proceedings.

(VII) Action under Section 390 of the Code of Criminal Procedure be taken against respondent No.1 - accused to the satisfaction of the trial Court.

(IX) Notice to respondents, as well as compliance report regarding action under Section 390 of the Code of Criminal Procedure, to be made returnable on 21st December 2023.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE