



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPLICATION (APPA) NO. 1186/2023
IN
CRIMINAL APPEAL NO.736/2023

1) Pramod s/o Sahebrao Ubarhande and
two others

.. Applicants

versus

The State of Maharashtra

Th: Its PSO PS Buldana Dist. Buldaana

.. Respondent

.....
Mr.K.P. Sadavarte, Advocate for the applicants

Mr.Ashish Kadukar, APP for Respondent-State
.....

CORAM: ANIL L. PANSARE, J.

DATED : 29th November,2023.

PC:

Heard, at length.

2. The applicants have filed this application under section 389 of the Code of Criminal Procedure. The applicants have been convicted by the judgment dated 30.10.2023 passed by the learned Additional Sessions Judge, Buldana in Sessions Trial No.67/2017 for the offences punishable under Sections 307, 186 read with Section 34 of the Indian Penal Code. It is submitted that the applicants have already paid the fine amount.

3. The basic fact which led to commission of the crime is said to be illegal excavation of *muroom*, which the applicants were carrying out on the land bearing Survey No.469 situated near Rajiv Gandhi Military School on Ajintha-Buldana Road at Buldana. The prosecution appears to have not filed on record the 7/12 extract of this land, to

indicate that it was belonging to the Government. In fact, there appears no record in this regard. The learned Judge of the trial Court, on the basis of evidence of PW4 and PW 6 i.e. Circle Inspector and Police Constable respectively, has recorded a finding that the Military school is located on this survey number.

4. Even if it is presumed that the Military School is situated at Survey No.469 that, by itself, will not prove the status of the land, to be belonging to the Government. In short, it appears that the status of the land under question has been not proved. There is no document or cogent evidence to show that this land belongs to the Government.

5. The question therefore will be whether the applicants would require permit to excavate the *muroom* from the land which is not proved to be belonging to the State Government.

6. The allegations of attempt to murder are said to be proved on the basis of three witnesses *viz.* PW4, PW5 and PW6. PW4 is the Circle Inspector who deposed that he received reliable information from sources that illegal excavation of *muroom* is being carried out upon the aforesaid land. He therefore visited the spot and found that JCB and tractor is standing. He questioned the applicant no.1-Pramod JCB operator as also the applicant no.3 Satish, tractor driver as regards their presence at the land, to which the operator and driver could not give satisfactory answer. PW4 then made a phone call to PW 6, a police official, who promptly attended the spot within fifteen minutes. He too questioned the operator and the driver as regards valid permit. The answer was in the negative. PW6 then instructed the JCB operator and

tractor driver to take the vehicles to the Police Station. The operator of JCB and driver of the tractor, instead made an attempt to flee away and in doing so, the witnesses *viz.* PW 4, PW5 and PW6 have deposed that the JCB operator and the tractor driver tried to run over on the person of PW4 and PW6, but they somehow managed to save themselves. It has come on record that there is no injury on the persons of PW 4 or PW 6.

7. The evidence of PW4, PW5 and PW6 is indicative of the fact that they made an attempt to stop the JCB as well as tractor but in vain.

8. The argument is that fleeing away and to make an attempt to run over the witnesses are two different acts. The persons like JCB operator and tractor driver may, due to apprehension, make an attempt to flee away and in doing so if someone makes an attempt to stop the vehicle, if dodged by the drivers of the vehicle or by the persons who intends to stop the vehicle, that by itself cannot attract the ingredients of Section 307 of the IPC.

9. I find substance in the arguments and, therefore, a detailed scrutiny of evidence will be required.

10. As regards the applicant no.2-Amol, who is the cleaner of the JCB, the learned APP could not point out any overt act on his behalf, to make an attempt to drive the vehicle on the person of PW4 or PW6. Despite such status, he has been held guilty under Section 307 of the IPC. The applicants have, thus, made out an arguable case.

11. The learned counsel for the applicants submits that there are no allegations that the applicants have misused the liberty while on bail pending trial. There are no criminal antecedents. They possess good case on merits. Hence, the order:-

ORDER

The execution of the sentence imposed upon the applicants by judgment and order dated 30.10.2023 passed by the learned Additional Sessions Judge, Buldana in Sessions Trial No.67/2017 for the offences punishable under Sections 307, 186 read with Section 34 of the Indian Penal Code, is hereby suspended and they be released on bail, on the following conditions :-

- (i) The applicants shall furnish PR bond in the sum of Rs. 25,000/- each, with one solvent surety in the like amount before the lower Court.
- (ii) The applicants shall remain present before this Court at the time of final hearing of the Appeal.

Criminal Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]