



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 18 OF 2022

Keraba s/o Vitthalrao Gaikwad,
Age : 68 Years, Occu. Agri.,
R/o Bori (Bk), Tq. Kandhar,
Dist. Nanded.

... Applicant
[Complainant]

Versus

1. Mallikarjun s/o Shivraj Chandolkar,
Age 56 Years, Occu. Agri.,
2. Shivrupa w/o Mallikarjun Chandolkar,
Age 51 years, Occu. Household,
Both R/o Bori (Bk), Tq. Kandhar,
Dist. Nanded.
3. The State of Maharashtra
Through Police Station Kandhar,
Tq. Kandhar, Dist. Nanded.

... Respondents

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Mr. J. B. Paikrao Advocate h/f Mr. G. G. Suryawanshi, Advocate for
the Applicant.

Mr. D. M. Shinde, Advocate for Respondent Nos. 1 and 2.

Mr. S. M. Ganachari, APP for Respondent No.3-State.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 12.03.2024.

ORDER :

1. This is a leave application to question the judgment and order of learned JMFC Kandhar dated 17.02.2021 acquitting respondents from offence under Sections 379, 323 r/w 34 of the Indian Penal Code [IPC].

2. It is pointed out that R.C.C. No. 162 of 2014 was instituted alleging commission of offence under Sections 323, 379 r/w 34 of IPC on the premise that in between 2.10.2013 to 03.10.2013, taking disadvantage of absence of complainant from the village, accused persons stole his soybean crop and when he questioned them, he was threatened, and hence the complaint.

3. Learned counsel for the applicant submitted that apart from testimony of complainant, there was evidence of independent witnesses. These witnesses had seen accused committing theft and had deposed to that extent. Still their evidence has been disbelieved and accused are acquitted. There is improper appreciation and therefore complainant intends to challenge the judgment and so he prays for leave.

4. In answer to above, learned counsel for respondents would submit that complainant could not establish his case firmly and cogently. That, witnesses could not state when exactly alleged theft took place. Secondly, there is no medical evidence in support of beating and injury. Therefore learned trial court committed no error in acquitting accused respondents and hence he prays to dismiss the application.

5. Heard both sides. Perused the papers.

6. Complainant Keraba filed above complainant alleging that he is owner and possessor of land gat no. 217. Because of harassment by accused no.1, he had sought injunction. When he was out of the village, on 02.10.2013 and 03.10.2013, accused persons committed theft of soybean worth Rs.50,000/- and when he went to question them, he was threatened and hence the complaint.

7. On going through the papers, it seems that precise complaint is that when complainant was out of the village on 2nd and 3rd October 2013, that time Soybean crop was found to be stolen. According to complainant, from Pandurang and Manohar, he learnt that accused persons have taken away soybean crop. He further deposed that when he went to question about it to the accused, that how his cotton crop has been stolen, accused no.1 asked him to do whatever he wanted and that he would further see him. In spite of approaching police, his report was not lodged and therefore he approached court of law.

8. His witness namely Manohar speaks about seeing accused near field of complainant on 02.10.2013. Whereas, according to another witness Pandurang, soybean crop of complainant was reaped by accused on 2nd October 2013 as well as 3rd October 2013 and he had seen it. Similar version was given by witness Shankar.

9. Therefore, apparently complaint is on hearsay information. One witness merely speaks about accused near the field of complainant and remaining two witnesses speak about accused reaping the crop on 2nd as well as 3rd October 2013. Exactly when and at what time crop was allegedly stolen and by what mode is not elaborated by any of the alleged eye witnesses. Moreover, their cross shows that they are brothers of complainant. Apparently, none of them have immediately reported complainant about alleged theft. It is also pertinent to note that how much crop was harvested is also not stated. Apparently, there is a dispute between complainant and accused. In cross, complainant admits about questioning accused for committing theft of cotton crop and thereafter accused threatening him, but it is shown to be an omission which is not finding place in the complaint.

10. Consequently, taking above material into consideration, case has not been proved by adducing cogent and reliable evidence. Therefore no fault can be found in the appreciation. No case is made out for grant of leave. Hence, I proceed to pass the following order:

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]