



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 55 OF 2019

Girjaba Sakharam Sable,
Age : 70 years, Occu. : Agri.,
R/o. Athegaon, Tq. Kannad,
District Aurangabad.

... Applicant.

Versus

1. Sahebrao Karbhari Sable,
Age : 40 years, Occu. : Agri.,
R/o. Athegaon, Tq. Kannad,
District Aurangabad.
2. Ratnabai Sahebrao Sable,
Age : 35 years, Occu. : Agri.,
R/o. Athegaon, Tq. Kannad,
District Aurangabad.
3. Jaywanta Rustum Pawar,
Age : 55 years, Occu. : Agri.,
R/o. Lamangaon, Tq. Kannad,
District Aurangabad.
4. Dashrath Dada Pawar,
Age: 20 years, Occu. Agri.
R/o. Lamangaon, Tq. Kannad,
District Aurangabad.
5. State of Maharashtra,
Through Police Inspector,
Kannad Police Station,
Dist. Aurangabad.

... Respondents.

...
Mr. Ravindra Nirmal, Advocate for Applicant.
Mr. Mahesh B. Ubale, Advocate for Respondent Nos.1 to 4.
Mrs. Chaitali Chaudhari – Kutti, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23rd APRIL, 2024

PRONOUNCED ON : 29th APRIL, 2024

ORDER :

1. Original complainant, who filed S.C.C. No. 726 of 2012, is aggrieved by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Kannad dated 14.01.2019 and hence is seeking leave to file appeal.

2. According to learned counsel for applicant, there was dispute over cart-way between complainant and accused. That, in such backdrop, on 15.10.2012 accused persons initially abused him, and thereafter beat him as well as his family members i.e. wife and daughter of complainant. After assault, they issued threats to kill, therefore complaint was required to be filed. According to learned counsel, there was overwhelming evidence of informant and his family members. However, learned trial Court failed to consider and appreciate it and merely holding enmity to be double edged weapon, directly came to the conclusion that, there is false implication and acquitted the accused. According to him, there is improper appreciation. That, there is no proper reasoning, and therefore, there being a good case, it is submitted that, leave so prayed be granted.

3. On the other hand, learned counsel for respondents pointed out that, there was apparently false implication due to

enmity. There is no convincing evidence. That, learned trial Court correctly appreciated the evidence and so he prays to refuse the leave.

4. Heard both sides. After going through the papers, it seems that, there was dispute between the parties on account of use of cart-way going through the agricultural field. It seems that they have also approached revenue authorities. Both are claiming and counter claiming about right to use way. In that backdrop, some incident taken place on 15.10.2012.

5. Complainant, his wife and daughter have been examined . That, there are allegations of beating by means of fist and kick blows. Admittedly, there is no independent evidence. Both learned counsel have invited attention of the court to observations of trial court in para 8 of the judgment, where there is reference about use of enmity to be double edged weapon. However, reasoning as to why evidence of complainant is unworthy of credence is not prima facie elaborated. Hence, there is need to re-appreciation of entire record including depositions and revenue record, if any, which are not currently placed before this court. Resultantly, there is a reason to be dealt in appeal. Hence leave so prayed requires to be granted. Accordingly I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)