

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

**APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO. 45 OF 2024**

SAHEBRAO HARIBHAU GHADGE CEO TRIMURTI PAWAN PRATISHTAN
VERSUS
FIRANGA GOVIND KOLEKAR AND OTHERS

...
Mr. Zafar M. Pathan, Advocate for Appellant
Mr. Rahul B. Temak, Advocate for Respondent Nos.1 To 8
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th OCTOBER, 2024

PER COURT :

1. By this application filed under Section 378(4) of Cr.P.C. applicant/original complainant seeks leave to file appeal against judgment and order of acquittal dated 11/01/2024, passed by learned Judicial Magistrate First Class, Newasa, in R.C.C. No.10/2024.
2. Respondents/accused were charged under Sections 447, 323, 504 and 506 r/w 149 of the Indian Penal Code, in a private complaint lodged by applicant wherein it is alleged that on 27/12/2009 when appellant and witnesses had gone in their property block No.101/1A and 101/2B for measurement, accused Nos.1 to 3 abused applicant. They entered in applicant's property, and assaulted him and witness Manish Ghadge by throwing stones. Accused No.1 threatened to kill them. Accused Nos.2 and 3 grabbed collar of Manish Ghadge and beat him. Thereafter, accused Nos.1 to

3 called accused Nos.4 to 8 who abused applicant. Accused Nos.5 and 6 held hands of complainant/applicant and accused No.8 pushed and snatched the measurement tape from applicant's hand. Accused No.8 assaulted him by means of measurement tape. All accused abused and threatened him. In support of his case, applicant has examined four witnesses. Trial Court has acquitted the accused persons. Hence, the application.

3. Heard learned advocate for complainant/applicant and learned advocate for accused/respondent Nos.1 to 8. Perused the application memo, notes of evidence placed on record and the impugned judgment and order.

4. Learned advocate for applicant submits that admitted position on record is that applicant is owner of both the lands and the incident had taken place in the land owned by applicant. However, the Trial Court has erroneously held that incident has taken place at the boundary and hence, Section 447 of I.P.C. is not attracted. He further submits that, though there is evidence of eye witnesses, trial Court has failed to appreciate the same in proper perspective while acquitting accused.

5. Learned advocate for accused, on the other hand, supported the impugned judgment and order.

6. Record indicates that there are contradictions in the evidence of witnesses examined by applicant. Though independent witnesses were available those are not examined and only

interested witnesses are examined. Alleged pelting of stones is not stated by applicant in the evidence or in the FIR. Assault by means of measurement tape is attributed to accused No.8 as per the evidence of PW2, whereas PW1 has stated that accused No.5 has assaulted by using measurement tape which was in her hands. Tearing of clothes and throwing of stones is not proved by applicant. It is, therefore, clear that applicant has failed to prove that accused have committed alleged offence.

7. Trial Court has recorded proper reasons while acquitting accused persons. View taken by the Trial Court is a possible view, which is not liable to be interfered with in the facts of the present case. No case is made out by applicant to grant leave to file appeal against acquittal. Application is, therefore, rejected.

(NITIN B. SURYAWANSHI, J.)