



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 112 OF 2019

Narayan Devidas Lathe,
Age : 28 Years, Occ. : - Labour/Agril.,
R/ Bodwad, Taluka Sillod,
District Aurangabad.

... Applicant
[Orig. Informant]

Versus

1. Uttamrao Bhaurao Gavane,
Age : 65 years, Occ: Agril.,
R/o Bodwad, Taluka Sillod,
District : Aurangabad.

2. State of Maharashtra,
Through Police Station, Ajintha,
Taluka Sillod, District Aurangabad.

... Respondents

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Mr. B. G. Lathe, Advocate for the Applicant.

Mr. Devdatt P. Palodkar, Advocate for Respondent No.1.

Mrs. Ashlesha S. Deshmukh, APP for Respondent No.2-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.04.2024

Pronounced on : 12.04.2024

ORDER :

1. Original complainant Narayan Devidas Lathe intends to prefer appeal against judgment and order of acquittal passed by learned Special Judge (Additional Sessions Judge-6), Aurangabad in Sessions Case No. 260 of 2015 dated 10.10.2017.

2. Learned counsel for the applicant would submit that prosecution was launched against present respondent on his complaint for commission of offence punishable under Section 384 of the Indian Penal Code [IPC] and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SCST Act]. That, prosecution has adduced evidence of in all 7 witnesses. Charges were cogently proved. Necessary ingredients for attracting charges were available but learned trial court has not appreciated the oral and documentary evidence. Learned counsel took this Court through the testimony of complainant and pointed out that he was victimized because of his caste. Caste certificate was placed on record. All charges were established but only due to improper appreciation of evidence and law, there is acquittal of accused from serious charges. Therefore, he prays for leave to appeal.

3. In answer to above, learned counsel for the accused pointed out that prosecution had miserably failed to establish the charges and essential ingredients. There was no cogent and reliable evidence. Evidence of witnesses was demolished in cross. Testimonies were full of improvements and omissions. That, very evidence of complainant was not inspiring confidence and as prosecution failed to bring home the charge by adducing cogent and reliable evidence, learned trial

court committed no error in acquitting accused and hence he prays that there is no good ground to grant leave and so he prays to dismiss the same.

4. Heard both sides. Perused the papers.

5. It seems that on complaint of present applicant at Exhibit 29, charge was framed against applicant for above offence i.e. Section 384 of IPC and under the provisions of the SCST Act.

The sum and substance of complainants evidence is that he belongs to Scheduled Caste. Accused Uttamrao held a meeting of the villagers in the temple of God Hanuman and alleged that present applicant, under influence of liquor, abused all villagers belonging to Maratha community, and thereby accused slapped fine of Rs.11,000/- on present applicant and on failure, he threatened to ostracize applicant and further asked villagers to ex-communicate applicant from others. That, he was forced to pay the fine of Rs.11,000/-. Hence the report.

6. After completion of investigation by PW7, accused was chargesheeted and tried.

7. On going through the papers, it seems that present applicant Narayan has alleged in report to Ajintha Police that on 17.01.2015, present respondent Uttamrao held a meeting of villagers in the Temple of God Hanuman and disclosed to the villagers that present applicant, under influence of liquor, abused entire people belonging to Maratha community on caste basis and therefore he should be fined, and on failure, he should be outcast and ex-communicated.

On the strength of complaint, police seem to have registered crime bearing no. 42 of 2015 for offence punishable under Section 384 of IPC and Section 3(1)(x) of the SCST Act.

After investigation, accused was chargesheeted and tried, during which prosecution seems to have adduced evidence of PW1 complainant Narayan, PW2 Vitthal as spot pancha, PW3 Dnyaneshwar - another pancha to seizure panchanama, PW4 Salubha - alleged eye witness, PW5 Devidas, PW6 Suryabhan and PW7-Investigating Officer.

8. Learned trial court, on appreciation of evidence held case of prosecution as not proved and acquitted the accused. Hence leave is sought.

9. A limited issue here now is that, whether *prima facie* learned trial court committed any patent illegality or perversity and therefore, a good ground exists for granting leave. In the complaint Exhibit 29 lodged with Ajintha Police Station, on minute scrutiny, one does not find specific allegation that present applicant belongs to Scheduled Cast and therefore purposefully, having knowledge to that extent, to demean and to humiliate applicant, accused respondent formed gathering and thereafter humiliated by directing fine and to ostracize him. Therefore, apparently essential ingredients for attracting provisions of SCST Act are not available. In spite of applicant claiming that villagers were called at the temple of God Hanuman and above directions were allegedly given by accused, no other villager has been examined to fortify his case.

10. Secondly, as pointed out, even receipt which is allegedly issued for payment of Rs.11,000/- stands in the name of father of applicant and not on him. Moreover, it is photocopy and original is not placed on record. Further, in cross he has admitted that he personally has not deposited the fine amount. He also, in cross, seems to have admitted that there is no distinct independent oral or documentary evidence with regard to alleged meeting held at the temple of God Hanuman on 17.01.2017.

11. PW2 and PW3 i.e. panchas speak of police obtaining their signature. PW4 did not support prosecution. PW6 Suryabhan, alleged eye witness, denied being present at the Gram Panchayat and claims to have not heard anything. Consequently, evidence on behalf of prosecution before trial court was apparently and patently weak. Therefore, when essentials for attracting the charge are not available on record, no fault can be found in the appreciation at the hands of learned trial court.

12. During hearing of application, learned counsel for applicant could not point out how learned trial court erred and committed illegality in acquitting accused. Moreover, no good ground being made or available to grant leave, and considering the quality of evidence, when this court is of considered opinion that no fruitful purpose would be served by granting leave, no case being made out on merits, this Court proceeds to pass following order:

ORDER

- I. Leave is refused.
- II. Application is rejected.

[ABHAY S. WAGHWASE, J.]