



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 189 OF 2018

The State of Maharashtra

Through :

Hadgaon Police Station,

Taluka Hadgaon, District Nanded.

... Applicant

Versus

1. Nagorao s/o Anandrao Suryawanshi
Age 44 years, Occu. Agri,
2. Vishwas s/o Anandrao Suryawanshi
Age 34 years, Occu. Agri.
3. Anandrao s/o Kerba Suryawanshi,
Age 73 years, Occu. Agri and Pensioner,
4. Ganesh s/o Kerbarao Suryawanshi,
Age : 52 years, Occu. Agri.,
5. Laxman s/o Anandrao Suryawanshi
Age 34 years, Occu : Service as teacher
All r/o Mhatala, Taluka Hadgaon,
District Nanded.

... Respondents
[Orig. Accused]

.....

Mr. S. M. Ganachari, APP for the Applicant-State.
Mr. G. K. Muneshwar, Advocate for the Respondents.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 19.03.2024

Pronounced on : 01.04.2024

ORDER :

1. State is intending to question the judgment and order of acquittal dated 28.05.2018 passed by learned Additional Sessions Judge, Nanded in Criminal Appeal No. 54 of 2016 acquitting respondents from offence under Sections 147, 325 r/w 149 of the

Indian Penal Code [IPC].

2. According to learned APP, present respondents were chargesheeted and tried for commission of offence punishable under Sections 147, 148, 325, 504, 506 r/w 149 of IPC and for offence under Section 135 of the Maharashtra Police Act. He further submitted that, accused persons were made face trial vide R.C.C. No. 128 of 2010 and learned JMFC, Hadgaon, on complete appreciation of oral and documentary evidence adduced by the prosecution, had recorded conviction for offence under Sections 147, 325 r/w 149 of IPC. That, against said order of conviction dated 16.08.2016, accused respondents preferred appeal before learned Additional Sessions Judge, Nanded by filing Criminal Appeal No. 54 of 2016. However, learned appellate court overturned the judgment and order of conviction and acquitted all accused from all charges.

3. According to learned APP, there is improper appreciation of evidence. There was eye witness account, injured witness account as well as medical witness account and therefore, learned JMFC had correctly appreciated such evidence and had recorded guilt by assigning sound reasons. On the contrary, learned Additional Sessions Judge took a very contrary view and acquitted all accused. Therefore, State intends to question said judgment and order passed by learned

Additional Sessions Judge and hence he seeks leave.

4. Supporting the judgment and order of learned Additional Sessions Judge, learned counsel for the respondents would submit that, learned trial court has not appreciated the evidence and law in its correct perspective. That, conviction was recorded by learned JMFC without assigning proper reasons. There was improper appreciation and therefore, learned appellate court, on complete appreciation, reached to the conclusion that findings reached by learned JMFC are contrary to the evidence and therefore interfered and set aside the judgment and order of JMFC. According to him, no case is made out for interference and there is no good ground to grant leave. Hence he prays to dismiss the same.

5. After going through the papers, it seems that after receipt of report, Hadgaon police registered crime bearing no. 75/2010 for above offences and accused were made to face trial before learned JMFC, who on appreciation, recorded guilt of accused for offence under Sections 147, 325 r/w 149 of IPC, but acquitted them from charge under Sections 148, 504, 506 r/w 149 of IPC. Such order of conviction seems to have been questioned by present respondents before the Sessions Court and learned Additional Sessions Judge,

Nanded, who dealt the appeal bearing Criminal Appeal No. 54 of 2016, set aside the judgment and order of conviction passed by learned JMFC.

Thus, here, two judicial forums appear to have taken dramatically opposite views. Therefore, in the considered opinion of this Court, each of the decisions need to be carefully put to scrutiny and this can be only done on full fledged hearing of appeal. Under such peculiar circumstances, leave is required to be granted as prayed. Hence, I proceed to pass the following order:

ORDER

- I. The application is allowed in terms of prayer clauses A to D.
- II. Leave is granted to file appeal.
- III. Registry to register the appeal.
- IV. The appeal stands **admitted**.
- V. Learned counsel for the respondents waives notice on admission.
- VI. Call record and proceedings.

[ABHAY S. WAGHWASE, J.]