



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

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO.145 OF 2019

Shaikh Gulab Rasulbhai
Age-68 years, Occu - Pensioner,
R/o. Plot No. 21, Manolila Nagar,
Bholegaon Phata, Ahmednagar,
Taluka Ahmednagar, Dist. Ahmednagar

...APPLICANT

VERSUS

1. Shaikh Najama Gulab .
Age-58 years, Occu- Service,
2. Shaikh Imran Gulab
Age-26 years, Occu- Education [Ori.Accused Nos. 1 & 2]

Both R/o. Ghodegaon,
Taluka Newasa, District Ahmednagar

3. The State of Maharashtra **..RESPONDENTS**

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Mr. G. R. Syed, Advocate for the applicant.
Mr. Z. H. Farooqui, Advocate h/f Mr. N. V. Gaware, Advocate for
respondent Nos. 1 and 2.
Mr. S. M. Ganachari, APP for the respondent No.3-State.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.02.2024

Pronounced on : 22.02.2024

ORDER :

1. Dissatisfied by judgment and order of acquittal passed by
learned Additional Sessions Judge, Ahmednagar dated 07-05-2019 in

Criminal Appeal No. 63/2015 arising out of judgment and order passed by learned 10th JMFC, Ahmednagar dated 16-02-2015 in S.T.C. No. 2533 of 2012, leave has been prayed for, to question the judgment and order passed by learned Additional Sessions Judge, Ahmednagar.

2. Learned counsel for the original complainant pointed out that he had instituted private complaint alleging commission of offence under Sections 323, 504, 506 read with section 34 of the Indian Penal Code [IPC]. He pointed out that learned JMFC, Ahmednagar, on appreciating evidence adduced by the complainant, accepted case of the complainant as proved and convicted respondents for the offences punishable under Sections 323, 506 read with section 34 of IPC and sentenced them to suffer imprisonment, however, acquitted both the accused for the offence punishable under Section 504 read with section 34 of the IPC.

3. It is next submitted that said judgment of learned JMFC, Ahmednagar dated 16-02-2015 was questioned before the learned Additional Sessions Judge, Ahmednagar by filing Criminal Appeal No. 63 of 2015. It is pointed that learned Additional Sessions Judge,

Ahmednagar allowed the appeal by setting aside the entire judgment and order passed by learned JMFC, Ahmednagar dated 16-02-2015.

4. It is pointed out that firstly, there is improper appreciation of evidence by learned Additional Sessions Judge. That, learned Magistrate had correctly appreciated evidence and had recorded guilt. Inviting attention of this court to the findings of learned trial judge in para 13, 16 and 25, he submitted that after complete evaluation of evidence, guilt of accused nos. 1 and 2 for voluntarily causing hurt on 25-10-2011 was held to be proved. It is pointed out, after taking this court through the findings of learned Additional Sessions Judge in para 8 to 11, that they are either contrary to the evidence or erroneous. It is further pointed out that testimony of injured complainant has not been appreciated and rather the judgment of learned JMFC has been entirely overturned without assigning sound reasons and therefore learned counsel prays for leave to question the said judgment.

5. Per contra learned counsel for the respondents pointed out that learned trial judge had not considered and appreciated controversy which was between husband on one hand and wife and son on

another hand. There was long standing rivalry, resulting into false implication. That, there is variance in the complaint and oral evidence of the complainant. Alleged eye witness was not examined and therefore, learned Additional Sessions Judge committed no error in acquitting the accused.

6. On considering above submissions, here, it appears that initially learned JMFC convicted present respondents for offences under Sections 323 and 506 r/w 34 of IPC by judgment and order dated 16.02.2015 in S.T.C. No. 2533 of 2012. The same seems to be challenged by filing Criminal Appeal 63 of 2015 before the court of Additional Sessions Judge and the same seems to have been allowed. Said judgment is now sought to be challenged by seeking leave.

7. *Prima facie* it appears that complainant is husband whereas accused are his wife and son. Trial court seems to have recorded guilt for offence under Sections 323 and 506 r/w 34 of IPC and acquitted them under Section 504 r/w 34 of IPC. But in appeal, said judgment of trial Judge is interfered by allowing entire appeal. Incidence seems to be a fall out of long drawn matrimonial dispute. Some incidence of 25.10.2011 is reported and one witness CW3 Nasir seems to have

corroborated testimony of complainant. Medical evidence of CW4 Dr. Deshmukh also is regarding examining complainant on account of history of assault. There is said to be hurt to the complainant and therefore learned trial Judge has held the occurrence of causing voluntary hurt proved.

8 Learned Additional Sessions Judge has held version of complainant to be exaggerated one. Medical evidence is doubted for complainant being treated from 25.10.2011 to 31.10.2011.

9. Therefore, *prima facie* two judicial forums seem to have reached to distinct and contrary versions. Correctness of the judgments needs to be appreciated properly in appeal. Therefore leave as prayed deserves to be granted. Hence, I proceed to pass the following order:

ORDER

- I. Application is allowed in terms of prayer clause [A].
- II. Application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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