



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 247 OF 2018

The State of Maharashtra,
Through – Taluka Jalna Police Station,
Jalna.

... Applicant

Versus

1. Seetaram Rustum Kharat
Age : 42 years
2. Tukaram Rustum Kharat
Age : 40 years
3. Vishwanath Narayan Wagh
Age : 36 years
4. Shivaji Malhari Wagh
Age : 45 years
5. Pandharinath Narayan Wagh
Age : 42 years,
All R/o Gondegaon
Taluka and District Jalna.

... Respondents
[Orig. Accused]

.....
Mr. N. D. Batule, APP for the Applicant-State.
Mr. P. P. More, Advocate for Respondent Nos. 3 to 5.
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 10.04.2024

ORDER :

1. State is aggrieved by the judgment and order of acquittal of present respondents from charge under Section 3(1)(f)(g) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SCST Act] and Sections 447, 504 and 506 r/w 34 of the Indian Penal Code [IPC] and is hereby seeking leave to question the said judgment and order passed by learned Additional Sessions Judge-3, Jalna in Special Case (Atro) No. 6 of 2011 dated 05.09.2018.

2. Appraising this Court about prosecution case against present respondents, learned APP pointed out that respondents were charge-sheeted for above offences. It is pointed out that, respondents accused had encroached upon land of informant. That, on 02.07.2009, measurements survey was done and boundaries were fixed, but according to prosecution, accused dismantled the same and issued threats to informant and there was caste abuse. Therefore, on report of informant, crime was registered bearing no. 333 of 2009 and after gathering sufficient evidence, respondents were charge-sheeted.

3. It is further submitted that, in trial court, prosecution had adduced evidence of 8 witnesses and relied on documentary evidence. All essential ingredients for attracting the charges were available, but still there is acquittal. According to learned APP, prosecution intends to question the judgment and hence he prays for leave.

4. Learned counsel for respondent nos.3 to 5 resisted the above application by pointing out that apparently there is false implication due to dispute of civil in nature. He pointed out that, evidence of prosecution, more importantly that of informant himself was not inspiring confidence about alleged occurrence. Consequently, trial court rightly acquitted the accused. Thus, he supports the acquit.

5. In the light of above submissions, perused the papers. Admittedly, there is civil dispute between complainant party and accused party, who are neighbours. There are allegations of encroachment of land. Civil disputes are also said to be pending apart from prosecution for provisions of IPC against each other. It is conspicuously found that the informant, who is examined at Exh.43, has not uttered anything about threat intimidation and actual utterance on caste abuse has also not been narrated by him. Therefore, apparently essentials for attracting offences for which respondents were charge-sheeted are not available in prosecution evidence. Taking the history of the background of enmity into consideration, possibility of false implication cannot be ruled out.

6. Perused the judgment under challenge, no fault is detect in the appreciation of evidence to hold improper appreciation. No

good ground being made out for grant of leave, I proceed to pass the following order:

ORDER

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

[ABHAY S. WAGHWASE, J.]