



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.496 OF 2022

IN

CRIMINAL APPEAL (ST.) NO.3733 OF 2022

(Bhagwat s/o Chintuji Bahurupi Vs. Haribhau s/o Kashinath Nikam (dead) and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. K. Jain, Advocate for the applicant.
Mrs. H.N. Prabhu, APP for the State.
Mr. R.D. Dharmadhikari, Advocate for respondent Nos.3 to 10 and 12 to 30

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- SEPTEMBER 4, 2024.

By preferring this application, the applicant/appellant is seeking leave to file appeal against the order of acquittal passed by the Judicial Magistrate First Class, Warud in Criminal Case No.949 of 2014.

2. The respondents herein are prosecuted for the offence punishable under Sections 143, 427 read with Section 149 of the Indian Penal Code on an allegation that the present respondents set on fire the cattle shade and house of the complainant on fire and thereby caused the damage to the agricultural implements as well as the house and the cattle shade. On the basis of same, the crime was registered against the present respondents. After completion of the investigation charge-sheet was submitted and the evidence was recorded before the trial Court. The trial Court after recording the evidence observed that the wife of the complainant herself admitted

during the cross-examination that she herself has set the cattle shade and house on fire and she had already removed the agricultural implements from the said cattle shade, therefore, the trial Court disbelieved the deposition and the evidence of the witnesses and acquitted the respondents.

3. Being aggrieved and dissatisfied with the same, present appeal along with the application for leave to file appeal was preferred by the original complainant on the ground that the impugned judgement and order is passed by the learned Magistrate without appreciating the evidence in proper perspective, and therefore, it needs to be quashed and set aside.

4. Learned Counsel for the applicant/appellant submitted that as far as the reasons assigned by the learned Magistrate while acquitting the accused is concerned which are baseless and contrary to the evidence. He submitted that considering there is consistent evidence to show the involvement of the present respondents in the alleged incident, the order and the judgement of the acquittal deserves to be quashed and set aside. He submitted that he has many arguable points in the present appeal, and therefore, leave be granted to him to prefer an appeal.

5. Learned Counsel for the respondents invited my attention towards the para No.9 of the impugned

judgement and submitted that wherein the Judicial Magistrate First Class specifically observed that the wife of the complainant has specifically admitted during her cross-examination that it was she who has set the said cattle shade on fire by removing the agricultural implements. He also invited my attention towards the deposition wherein wife of the complainant has stated that she was enquired regarding the incident of setting the cattle shade and the house on fire. The statement of Nirmala Barange also discloses that after hearing the shouts they came out of the house and witnessed that Devkubai Bahurupi was shouting as “पेटलं पेटलं”, and therefore, she enquired with her and she disclosed that the house got fired. As far as the involvement of the present respondents in the alleged incident is concerned neither the respondents are witnessed near the spot of incident nor their presence was noted by any of the witness at the time of the incident. Thus, as far as the allegation of the complainant is concerned regarding that the present respondents have set the cattle shade and the house of the complainant on fire is not substantiated by any evidence which is adduced before the Court. Therefore, the learned Magistrate has rightly appreciated the evidence and rightly considered that there is absolutely no evidence to connect the present respondents with the alleged incident and acquitted them from the charges. Thus, considering the entire material on record and the evidence recorded before the trial Court, there is

absolutely no evidence to show that the present respondents were present at the time of incident and they have set the said cattle shade and house on fire. Thus, no illegality is committed by the trial Court while acquitting the accused. As far as the grounds raised by the appellant for seeking leave to file an appeal is concerned which is not substantiated by any material and any evidence which was recorded during the trial. Thus, no case is made out for grant of leave to file an appeal. In view of that, the application is devoid of merits and liable to be dismissed.

6. Hence, the application is dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*