



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

CRIMINAL APPEAL NO. 287 OF 2005

The State of Maharashtra
Through Police Station,
Itwara, Nanded

Appellant

Versus

1. Akbar Khan Mustafa Khan
2. Mohd. Yonus Mohd. Ismail
Respondent Nos.1 and 2 stand
abated as per order dated
06.09.2024.
3. Sk. Masood Sk. Quadar
Age : 42 yrs, occ : agri.,
4. Ab. Rahim Ab. Zahed
Age : 35 yrs, occ : driver
5. Aliyar Khan Mozzam Khan
Age : 25 yrs, occ : electrician
6. Abed Khan Mustafa Khan
Age : 19 yrs, occ : education
7. Sayeed Khan Mustafa Khan
Age : 24 yrs, occ : business
8. Sk. Mujahed Sk. Ahmed Miyan
Age : 20 yrs, occ : business

All r/o Siddhanathpuri, Nanded

Respondents

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Mr. R.B. Dhaware, A.P.P. for the appellant / State.
Mr. Suraj R. Bagal, Advocate holding for Mr. B.N. Gadegaonkar,
Advocate for respondent Nos. 3 to 8.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 4 MARCH 2025.

JUDGMENT :

1. The appellant/State has filed this appeal against the acquittal of respondents/accused recorded by learned Judicial Magistrate, First Class, Nanded in S.C.C. No.92/2003 under the judgment dated 16.12.2004 from the offence under Sections 143, 448, 188 and 427 of the Indian Penal Code (for short, "I.P.C.").

2. As per the prosecution story, on 29.11.2002, PW-1 Mohammad Iftekquaroddin was Pesh Imam in Masjid-E-Shaukatul Islam at Brahmapuri, Nanded. He was looking after the affairs of said Masjid. One Mr. Mohd. Ahmed Mohioddin was his father and he was also offering Namaz since last 40 to 45 years. There was dispute between the PW-1 Iftekquaroddin and PW-2 Mohioddin and the respondents/accused on account of room in occupation of Iftekquaroddin situated on open side behind the Masjid. The said Masjid was under control of Waqf Board, Aurangabad and PW-2 Mohioddin was appointed as Mutawalli to the said Masjid. However, due to some mis-management he was removed from the post of Mutawalli by the Waqf Board.

Therefore, he had instituted one civil suit bearing R.C.S. No.659 of 2001 against some of the accused and one Masioddin for perpetual injunction for not to interfere in the management of Masjid. In the said suit, the concerned Civil Court had also granted status-quo order. However, despite passing such order, the respondents/accused on 29.11.2002 at about 2.00 p.m. forcibly entered into the house of complainant Iftekquaroddin and removed iron tin sheets from the roof and also broke walls of the said house resulting into causing damage of Rs. 10,000/-. At the time of incident there was mob of 100 to 200 persons on the spot. The respondents/accused were charge-sheeted for the offence as mentioned above after the due investigation. However, the learned trial Court, after conducting the trial, acquitted them of all the charges levelled against them.

3. The learned A.P.P. strongly argued that the learned trial Court has definitely erred in acquitting all the accused despite there being evidence of eye witnesses. Further, the spot panchnama also revealed the damage caused to the house of complainant Iftekaroddin. Moreover, there was order of status-quo in force passed by the competent civil court, at the time of incident. As such, he prayed for reversal of impugned

judgment and thereby prayed for conviction of the respondents/accused.

4. On the contrary, the learned Counsel for the respondents/accused pointed out that accused Nos.1 and 2 have already died during the pendency of this appeal and the proceeding is already abated against them. He pointed out that though the witnesses of the prosecution have deposed as per the prosecution story, but in their cross-examination, they have given vital admissions by which the entire story of prosecution has been shattered. Thus, he prayed for dismissal of appeal.

5. Heard rival submissions. Also perused the impugned judgment alongwith record and proceeding of the original case.

6. So far as charge under Sections 143, 448 and 427 of I.P.C. is concerned, the complainant has claimed that on the day and time of the incident all the respondents/accused forcibly entered into his house and caused damage to his house by removing the roof as well as breaking the walls. The complainant has also deposed accordingly about the act of the respondents. However, in the cross-examination he has

admitted that at the time of incident he was offering Namaj in the Masjid. It was also admitted by him that the Municipal Corporation and Waqf Board had already issued notices to him to vacate the said house. Thus, from his admissions it is highly doubtful that he had seen the actual incident. Further, in respect of removing the tin sheet and breaking of walls of the house of complainant, it can be inferred that there may be action taken by the local bodies.

7. So far as the evidence of PW-2 Mohioddin is concerned, it has already come on record that at the time of incident he was not in the house and had gone to market at about 11.00 a.m. As such, his presence on the spot of incident at the relevant time is also doubtful. Further, if the evidence of PW-3 i.e. wife of the complainant by name Ifatjarin is perused, then it reveals that though she deposed about the incident as per the prosecution story, but in the cross-examination itself she stated that she was working in Hazrat Fatema School and timing of her duty was from 7.00 a.m. to 1.00 p.m. Moreover, she has also stated that it took one hour for her to reach house from the school. Thus, her presence on the spot of incident at the relevant time is also doubtful. There is no significance attached to the evidence of panch witness as

it revealed the situation on the spot, but could not establish the presence of respondents/accused on the spot. It is significant to note that most of the prosecution witnesses are from the same family and there was already dispute going on between themselves and respondents/accused on account of management of the Masjid. Moreover, notices for vacating the house were already issued by the Waqf Board as well as Local Authority to the complainant. Under such circumstances and in absence of reliable and trustworthy evidence on record about involvement of the respondents/accused in the incident, it is highly difficult to hold that on the day of incident the respondents/accused being the members of unlawful assembly forcibly entered into the house of complainant and caused the damage as mentioned above. Therefore, a possibility cannot be ruled out that the complainant and his family members might have falsely implicated the respondents.

8. So far as the charge under Section 188 of I.P.C. against the respondents/accused is concerned, it is in respect of disobedience of the order promulgated by the public servant. The prosecution is claiming that there was status-quo order passed by the competent Civil Court and it was in force at the time of incident. However, the learned trial Court

has observed that the order so promulgated was from the public servant and here in this case there was status-quo order passed by the competent Civil Court and for breach of the said order the remedy under Order 39 Rule 2(A) of C.P.C. was readily available. In view of the same, the learned trial Court has observed that there is no question of attracting charge under Section 188 of I.P.C. in the instant matter. Apparently, no perversity is seen in the aforesaid observation of the learned trial Court as the remedy under the aforesaid Order of C.P.C. was already available to the complainant and his family members. Thus, considering all these aspects and the contradictions in the evidence of complainant and his family members, it is highly difficult to convict the respondents/accused for the aforesaid charge. On the contrary, the rivalry between complainant party and respondents/accused indicates that there may be possibility of false implication of the respondents/accused at the hands of complainant.

9. It is extremely important to note that a mob of 100 to 200 people had gathered on the spot of the incident at the time of incident. However, the prosecution could not cite any independent witness who could have stated about the alleged

incriminating act of the respondents/accused. Otherwise also, in view of the notices issued to the complainant by the Waqf Board as well as Local Administrative Authority, his occupation in the disputed house was already held illegal. Thus, to retain the said house the complainant might have involved respondents/accused in false case. Under such circumstances, the respondents/accused, specially respondent Nos. 3 to 8, are definitely entitled for benefit of doubt since the proceeding is already abated against respondent Nos.1 and 2/accused. Under such circumstances, no interference is required in the impugned judgment and accordingly the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)