

STATE OF MAHARASHTRA

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v.

SHANKAR GANAPATI RAHATOL & ORS.

(Criminal Appeal No. 799 of 2010)

JANUARY 31, 2019

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[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

*Code of Criminal Procedure, 1973 – s.378(3) – Leave to prefer appeal before High Court – Trial court acquitted accused against the charges u/ss.143, 147, 323 r/w. ss.149, 325 of IPC and s.135 of Bombay Police Act – State’s application u/s.378(3) before the High Court was rejected – Revision petition by complainant against the acquittal order was also rejected by the High Court – On appeal, held: The reason for rejection of application u/s.378(3) was contrary to the evidence on record – Material on record indicate a prima facie case to prefer appeal against the judgment of the trial court – It is a fit case for grant of leave to appeal also in view of the fact that a cross-complaint relating to the same incident is pending in appeal before the High Court – Impugned order of the High Court rejecting application u/s.378(3) set aside – No reason to reject the revision petition filed by the complainant – Accordingly, matter remitted to the High Court for fresh consideration, to decide the criminal revision on its own merit – Penal Code 1860 – ss.143, 147, 323 r/w. 149, 325 – Bombay Police Act – s. 135.*

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**Disposing of the appeals, the Court**

**HELD: 1.1** The reason for rejecting the application for leave to appeal ran contrary to evidence on record. In any event, having perused the material on record, *prima facie*, a case is made out by the State for grant of leave to prefer appeal against the judgment and order dated 06.05.2005, passed by the trial Court. [Para 5][1032-F]

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**1.2** There was also a cross complaint by other faction in the village relating to same date incident on which basis a case was registered and the accused therein were tried and convicted for offences under Section 143, 147, 307, 324, 427, 504, 395, 325, 337, 452 read with 149, 325 IPC. Appeal preferred against

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A that judgment is pending before the High Court. As the two groups in the village filed cross complaints and appeal arising out of one is pending before the High Court. It is a fit case for grant of leave. [Para 6][1032-G-H; 1033-A]

B 1.3 For the aforesaid reason this appeal is allowed and impugned order dated 13.06.2008, rejecting leave to appeal u/s.378(3) of Cr.P.C., is set aside. Consequently, application filed before the High Court stands allowed. The criminal appeal preferred by the State challenging the acquittal in the trial Court shall be taken on file. [Para 7][1033-B]

C *State of Maharashtra v. Sujay Mangesh Poyarekar* (2008) 9 SCC 475 : [2008] 13 SCR 750 – referred to.

D 2.1 This Court is of the view that as the impugned order of the High Court in Criminal Application u/s.378(3) of Cr.P.C. has already been set aside in the appeal filed by the State, there is no reason to reject the revision filed by the complainant. [Para 11][1033-F]

E 2.2 Accordingly, the impugned order of the High Court in Criminal revision application is set aside and the matter is remitted to the High Court for fresh consideration, to decide the criminal revision on its own merit. [Para 12][1033-F-G]

#### Case Law Reference

[2008] 13 SCR 750      referred to      Para 4

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 799 of 2010.

From the Judgment and Order dated 13.06.2008 of the High Court of Judicature at Bombay in Criminal Application No. 4504 of 2006.

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Criminal Appeal Nos. 798, 800 of 2010 and 197 of 2019.

Vinay Navare, Pravin Satale, Rajiv Shankar Dvivedi, Ms. Deepa M Kulkarni, Nishant Ramakantrao Katneshwarkar, Sushil Karanjkar, K.N. Rai, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

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**R. SUBHASH REDDY, J.** 1. The State of Maharashtra has preferred this appeal aggrieved by the order dated 13.06.2008, passed by the High Court of Judicature at Bombay, in criminal Application No. 4504 of 2006.

2. On 01.09.1998 a complaint was lodged by one Shivram, who was examined as P.W.1 stating that on 29.08.1998 at around 9 O'Clock he was doing work in Hanuman Water Supply Society, sitting at Kalamma Milk Dairy. At that time the loud speaker was switched off. When he came out of Milk Dairy to know why loud speaker was switched off, he found Ananda Ganpati Rhatol, Shankar Ganpati Rhatol, Yashvant Shripati Rhatol, Shivaji Bapu Khot, Rangrao Piraji Angaj, Shankar Ganu Metil, Samadhan Shankar Metil, Damodar Tukaram Raut, Ramesh Damodar Taut, Dattatraya Vasant Rhatol, Baburao Dattatray Rhatol, Baburao Jaysingh Rhatol, Ganpati Krishna Powar, Hanumant Krishana Powar and other persons approaching towards him and they had attacked and assaulted him. In the said attack, he stated that he was injured and hospitalized. Subsequently, after recovery, he lodged complaint on 01.09.1998, based on which FIR No. 1165/1998 was registered. Based on the complaint lodged, investigation was made and the respondents herein were charged for offences punishable under Sections 143, 147, 323 read with 149, 325 of I.P.C. and 135 of Bombay Police Act. After charge sheet was filed, case was tried by the learned 5th Additional Sessions Judge, Kolhapur. Vide judgment dated 06.09.2005 all the accused were acquitted of the charges framed against them.

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3. The appellant-State has filed application seeking leave to prefer appeal as contemplated under Section 378(3) of Cr.P.C., 1973, which was numbered as criminal application No. 4504 of 2006. The aforesaid application was rejected by impugned order dated 13.06.2008 and the High Court declined leave to appeal. Hence this appeal by the State.

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4. We have heard learned counsel for the State as well as the counsel appearing for the respondents-accused and perused order dated 13.06.2008 and other material placed on record. In support of the case, a reliance is placed by counsel for the appellant-State on the judgment in the case of State of Maharashtra vs. Sujay Mangesh Poyarekar, reported in (2008) 9 SCC 475. In the aforesaid judgment, the scope of Section

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A 378(3), Cr.P.C. has been considered by this Court. The relevant paragraphs 20 and 21 of the aforesaid judgment reads as under :

B “20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a *prima facie* case has been made out or arguable points have been raised and not whether the order of acquittal would or would be set aside.

C 21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

D 5. Further, we have noticed from the impugned order that while rejecting the application, the High Court has stated that medical evidence did not indicate any injury on the back or on the thigh of the complainant. However, from the material placed on record, it appears that the said, finding in the order run contrary to the medical evidence on record. Dr. Yashwant who was examined as P.W. 5, in his deposition, categorically stated that the complainant Shivram had sustained a fracture of left tibia and there were also lacerated wounds. The medical evidence documents were exhibited as Exhibits 121 and 131. The reason for rejecting the application for leave to appeal run contrary to evidence on record. In any event, having perused the material on record, we are of the view that, *prima facie*, a case is made out by the State for grant of leave to prefer appeal against the judgment and order dated 06.05.2005, passed by the 5th Additional Sessions Judge, Kolhapur in Sessions Case No. 140 of 2000.

G 6. We are also informed that there was a cross complaint by other faction in the village relating to same date incident on which basis a case was registered and the accused therein were tried in Sessions Case No.83/1999. The accused therein were convicted for offences under Section 143, 147, 307, 324, 427, 504, 395, 325, 337, 452 read with 149, 325 IPC. It is stated that appeal preferred against that judgment is

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pending before the High Court. As it is stated that the two groups in the village filed cross complaints and appeal arising out of one is pending before the High Court, we are of the view that it is a fit case for grant of leave as prayed for by the appellant-State. A

7. For the aforesaid reason this appeal is allowed and impugned order dated 13.06.2008 is set aside. Consequently, application filed before the High Court stands allowed. The criminal appeal preferred by the State challenging the acquittal in Sessions Case No. 140 of 2000 shall be taken on file. B

8. In appreciation of the contention raised by the respective parties, we request the High Court to take up the appeal in terms of this order, as well as Criminal Appeal No. 849 of 2005 simultaneously and decide the same expeditiously. C

CRIMINAL APPEAL NO. 197 OF 2019

(Arising out of SLP(Crl.) No. 3359 OF 2010) D

9. Leave granted.

10. The complainant has filed criminal Revision application No. 119 of 2006 before the High Court aggrieved by the order of acquittal passed in Sessions Case No.140 of 2000. The same is rejected on the basis of the impugned order passed in Criminal Application No. 4504 of 2006. E

11. We are of the view that as the impugned order in Criminal Application No. 4504 of 2006 has already been set aside by this Court in the appeal filed by the State, there is no reason to reject the revision filed by the complainant. F

12. Accordingly, the impugned order dated 21.01.2010 in Criminal revision application No. 119 of 2006 is set aside and the matter is remitted to the High Court for fresh consideration, to decide the criminal revision on its own merit. G

CRIMINAL APPEAL NO. 798 OF 2010

CRIMINAL APPEAL NO. 800 of 2010

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A            13. In view of order passed in the aforesaid appeals, it is stated that no further orders are required to be passed in these appeals. Accordingly, these appeals also disposed off.

Ankit Gyan

Appeals disposed of.