

MHAM010016022019



Presented on : 12.03.2019

Registered on : 13.03.2019

Decided on : 05.06.2026

Duration : 7Y. 2M. 23Days.

Exh. No.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-2 AMRAVATI

(Presided over by Yashwant A. Goswami)

Criminal Appeal No.50/2019

Waman Sitaramji Zade,

Age : 67Yrs., Occu. Agriculturist,

R/o Nimbhora (Bodkha)

Tq. Dhamangaon Railway,

Distt. Amravati.

.... **Appellant****VERSUS**

Ramsingh Gulabraoji Chaware,

Aged 65Yrs., Occu Agriculturist,

R/o. Nimbhora (Bodkha)

Tq. Dhamangaon Railway,

Distt. Amravati.

.... **Respondent****APPEAL UNDER SECTION 372 OF CRIMINAL PROCEDURE CODE**

Advocate for Appellant : Shri. S.S. More

Advocate for respondent : Nor present for respondent

J U D G M E N T

(Dated 05.06.2026)

The present appeal arises out of the judgment dated 06.02.2019 passed by the learned Judicial Magistrate First Class, Dhamangaon Railway in Summary Criminal Case No.218/2014, whereby the Accused came to be acquitted of the offences punishable under Sections 186 and 427 of the Indian Penal Code. The said

judgment of acquittal is under challenge at the instance of the Complainant.

2. The case of the Complainant, as can be gathered from the complaint and the evidence led before the trial Court, is that he had earlier instituted civil proceedings in respect of agricultural lands situated at Mouza Nimbhora Bodkha and Mouza Talni. According to him, in respect of agricultural land bearing Survey No.64, Gut No.172 situated at Mouza Talni, a decree had already been passed in his favour and execution proceedings seeking delivery of possession were pending before the Civil Court at Dhamangaon Railway.

3. It is the case of the Complainant that pursuant to the orders passed by the Civil Court and in accordance with the directions issued by the High Court, necessary steps were undertaken for execution of the possession warrant. For carrying out measurement of the land and execution of the possession warrant, he deposited measurement charges of Rs.9,000/- with the office of Taluka Inspector of Land Records, Dhamangaon Railway. He further deposited requisite charges for obtaining police protection and also deposited fees for appointment of a Special Bailiff. According to him, as per the instructions of the measurement authorities, he engaged labourers for carrying bamboo poles and flags required for demarcation of the land and incurred expenditure towards their wages and transportation charges.

4. The Complainant further pleaded that on 24.12.2013 the execution proceedings were to be carried out on the spot. On that day, Bailiff Sudhakar Rao Choube from the Civil Court, Measurement Officer Deshpande from the office of Land Records, police personnel from Police

Station Mangrul Dastagir and labourers engaged for measurement work reached the disputed field. The Complainant also remained present at the spot.

5. According to the Complainant, at that juncture the Accused suddenly reached the field and obstructed the proposed measurement and execution proceedings. It is alleged that the Accused prevented the public officials from carrying out their official duties and thereby hindered implementation of the possession warrant. Owing to such obstruction, the measurement could not be undertaken and the possession warrant could not be executed. Consequently, according to the Complainant, he suffered financial loss on account of the expenditure already incurred towards measurement fees, police charges, bailiff charges and labour expenses.

6. The Complainant further pleaded that despite such obstruction, neither the Measurement Officer nor the Bailiff initiated any criminal action against the Accused. He therefore approached the police authorities and lodged a report. As no effective action was taken thereon, he instituted the present private complaint alleging commission of offences punishable under Sections 186 and 427 of the Indian Penal Code and sought punishment of the Accused. He further claimed compensation of Rs.1,00,000/- on account of mental, physical and financial loss allegedly suffered by him.

7. The defence of the Accused, as emerging from the cross-examination of prosecution witnesses, suggestions put on his behalf and his statement recorded under Section 313 of the Code of Criminal Procedure, is one of total denial.

8. The Accused did not dispute his presence at the spot on the date of the incident. However, according to him, he was in possession of the disputed land and was claiming independent rights therein. His specific stand was that he had purchased the property under registered sale deeds and was lawfully occupying the same. According to him, he had shown the sale deeds to the concerned authorities present on the spot and informed them that the land was in his possession.

9. The Accused further contended that no possession warrant had been issued against him and no authority had been produced authorising dispossession of a person claiming independent possession over the property. According to him, he merely objected to the proposed measurement and questioned the authority under which the officials intended to proceed. His defence is that he never created any unlawful obstruction, never prevented any public servant from discharging official duties and never committed any act amounting to mischief.

10. The Accused specifically denied having caused any damage to property or having committed any act resulting in destruction, diminution in value or injury to any property. According to him, the complaint is false and has been filed solely because he asserted his independent claim over the disputed land.

11. Thus, while the Complainant asserts that the Accused illegally obstructed execution of the possession warrant and caused financial loss, the Accused maintains that he merely asserted his possession and objected to the proposed action in the absence of any order authorising dispossession of him and that no ingredients of either Section 186 or Section 427 of the Indian Penal Code are attracted.

12. Upon presentation of the private complaint by the Complainant alleging commission of offences punishable under Sections 186 and 427 of the Indian Penal Code, the learned Judicial Magistrate First Class, Dhamangaon Railway took cognizance and registered Summary Criminal Case No.218/2014 against the Accused. After issuance of process, the Accused appeared before the Court and contested the proceedings.

13. The substance of accusation for offences punishable under Sections 186 and 427 of the Indian Penal Code came to be explained to the Accused. The Accused pleaded not guilty and claimed to be tried. His defence, as emerging from the record, was that he was in possession of the disputed land under registered sale deeds, that no possession warrant had been issued against him and that he had merely asserted his rights over the property. He denied having committed any criminal obstruction or having caused any wrongful loss to the Complainant.

14. In order to substantiate the allegations levelled in the complaint, the Complainant entered the witness box and examined himself as Waman Sitaramji Zade (PW-1) (Exh.26). Through his testimony, PW-1 reiterated the facts pleaded in the complaint regarding the civil litigation, execution proceedings, appointment of the measurement officer, engagement of the Special Bailiff, provision of police protection and payment of various charges incurred by him for execution of the possession warrant. PW-1 further deposed that on 24.12.2013, when the officials had assembled on the spot for execution of the warrant and measurement of Survey No.64, Gut No.172 situated at Mouza Talni, the Accused arrived at the field and obstructed the proposed proceedings, as a result of which measurement could not be carried out and possession could not be delivered.

15. The Complainant next examined Gajanan Krushnarao Deshpande (PW-2) (Exh.53), who was serving in the office of the Land Records Department and had attended the spot for carrying out measurement work pursuant to the directions issued in the execution proceedings. PW-2 supported the prosecution case to the extent that he had gone to the spot for measurement of the disputed land. According to the prosecution, he also stated that the measurement could not be completed because of the conduct of the Accused. However, during the course of his evidence, certain admissions came on record regarding the Accused showing documents in support of his claim and questioning the authority under which possession was proposed to be delivered.

16. The Complainant thereafter examined Sudhakar Shamraoji Choube (PW-3) (Exh.59), who had been appointed as Special Bailiff for execution of the possession warrant. PW-3 deposed about his presence on the spot along with the measurement officer and police personnel. According to the prosecution case, PW-3 stated that the Accused objected to the proposed measurement and delivery of possession by asserting that he had purchased the land and that the measurement ought not to be undertaken.

17. The Complainant also examined Pundlik Ramchandra Chavhan (PW-4), a police official who had accompanied the execution party pursuant to the request for police protection. According to the prosecution, PW-4 also spoke about the presence of the Accused at the spot and the fact that the execution proceedings could not proceed as originally intended.

18. Besides oral evidence, the Complainant relied upon documentary evidence including receipts relating to measurement charges, police protection charges and Special Bailiff fees. The Complainant also relied upon documents connected with the execution proceedings and the proposed measurement of the disputed property. During the course of arguments before the trial Court, particular reliance was placed upon documents relating to Regular Darkhast Nos.4/2011 and 5/2011, possession warrants, notices issued by the Land Records Department and receipts evidencing expenditure allegedly incurred by the Complainant.

19. After completion of the prosecution evidence, the statement of the Accused under Section 313 of the Code of Criminal Procedure came to be recorded. The Accused denied the incriminating circumstances appearing against him. He specifically denied having obstructed the measurement or delivery of possession. However, he stated that the land was in his possession and that he had informed the concerned officers accordingly. He further stated that he had shown his sale deeds to the authorities present on the spot and had objected to the proposed measurement on the ground that the property belonged to him and was in his possession. The Accused did not choose to enter the witness box and did not examine any defence witness.

20. Upon completion of the trial, the learned Magistrate framed the following points for determination:

1. Whether the Complainant proves that on 24.12.2013 the Accused obstructed measurement of Survey No.64 and Gut No.172 and thereby obstructed Government officers in discharge of their

public functions so as to constitute an offence punishable under Section 186 of the Indian Penal Code?

2. Whether the Complainant proves that on the said date and place the Accused obstructed the proposed measurement, caused loss to the Complainant and thereby committed an offence punishable under Section 427 of the Indian Penal Code?
3. What order?

21. Upon appreciation of the evidence and material on record, the learned Magistrate answered Point No.1 in the negative. The trial Court observed that there was a material omission in the complaint regarding the alleged words attributed to the Accused and further held that the evidence disclosed that the Accused had asserted possession and questioned the authority under which the measurement and delivery of possession were sought to be undertaken. The learned Magistrate recorded a finding that mere objection to measurement, in the circumstances appearing on record, could not by itself amount to obstruction of a public servant in discharge of official duties.

22. The trial Court further held that prosecution for an offence punishable under Section 186 of the Indian Penal Code was barred in view of Section 195 of the Code of Criminal Procedure, since the complaint had not been instituted by the concerned public servant or by a public servant administratively superior to him.

23. While dealing with Point No.2, the learned Magistrate held that the essential ingredients of mischief as defined under Section 425 of the Indian Penal Code had not been established. The Court observed that the evidence did not disclose destruction of property, diminution of value of property or injury to property. The Court further held that expenditure incurred by the Complainant towards measurement charges, police charges, bailiff charges and labour charges could not be equated with destruction of property so as to attract the offence punishable under Section 427 of the Indian Penal Code.

24. Consequently, by judgment dated 06.02.2019, the learned Judicial Magistrate First Class, Dhamangaon Railway acquitted the Accused of the offences punishable under Sections 186 and 427 of the Indian Penal Code under Section 255(1) of the Code of Criminal Procedure.

25. Being dissatisfied with the said judgment of acquittal, the Complainant has preferred the present appeal. The principal grievance raised in the memorandum of appeal is that the learned Magistrate failed to properly appreciate the evidence of the Complainant, the Measurement Officer and the police witness. According to the Appellant, the evidence on record clearly established obstruction to execution proceedings and obstruction to public servants while discharging official duties. It is further contended that the learned Magistrate failed to appreciate the documents produced by the Complainant and erroneously extended the benefit of doubt to the Accused despite there being sufficient evidence to warrant conviction.

26. The points for my determination alongwith my findings thereon with reasons therefor are undergone.

Sr.No	Points	Findings
1.	Whether the Complainant proves that on 24.12.2013 the Accused obstructed public servants in discharge of their public functions and thereby committed an offence punishable under Section 186 of the Indian Penal Code?	..No.
2.	Whether the Complainant proves that the Accused committed mischief causing wrongful loss to the Complainant and thereby committed an offence punishable under Section 427 of the Indian Penal Code?	..No.
3.	Whether the judgment of acquittal dated 06.02.2019 passed by the learned Judicial Magistrate First Class, Dhamangaon Railway calls for interference in appeal?	..No.
4.	What order?	Appeal dismissed

As to Point Nos. 1 and 2

27. Since both these points arise out of the same transaction dated 24.12.2013 and are founded upon the same body of evidence, they are conveniently taken up together for discussion.

28. The prosecution case rests upon the allegation that pursuant to execution proceedings arising out of a civil dispute, the Complainant had undertaken necessary steps for execution of a possession warrant in respect of agricultural land bearing Survey No.64, Gut No.172 situated at Mouza Talni. According to the Complainant, he deposited measurement charges of Rs.9,000/-, Special Bailiff charges of Rs.600/-, police protection charges of Rs.2,896/- and also incurred expenditure towards labourers and other incidental expenses. It is his case that on 24.12.2013 the Measurement Officer, Bailiff, police personnel and labourers reached the spot for execution of the warrant and measurement of the land. At that time the Accused allegedly obstructed the proceedings, resulting in failure of measurement and consequent loss to the Complainant.

29. The evidence of Waman Sitaramji Zade (PW-1) (Exh.26) substantially follows the pleadings set out in the complaint. PW-1 deposed that the Accused came to the field and objected to the measurement proceedings. According to him, because of such obstruction, measurement could not be carried out and possession could not be delivered on that day. PW-1 further stated that he suffered financial loss on account of the expenses incurred by him in preparation for execution of the warrant.

30. The evidence of Gajanan Krushnarao Deshpande (PW-2) (Exh.53), Sudhakar Shamraoji Choube (PW-3) (Exh.59) and Pundlik Ramchandra Chavhan (PW-4) lends support to the prosecution to the extent that all these witnesses acknowledge their presence at the spot and also acknowledge that the proposed measurement could not ultimately be completed. The prosecution has therefore succeeded in proving that the officials concerned had in fact reached the disputed property for carrying out the proposed execution proceedings.

31. The crucial question, however, is not whether the officials reached the spot or whether measurement ultimately remained incomplete. The real question is whether the conduct attributed to the Accused constitutes criminal obstruction within the meaning of Section 186 of the Indian Penal Code and whether the consequences flowing therefrom attract Section 427 of the Indian Penal Code.

32. At this stage, the defence of the Accused assumes significance. Throughout the proceedings the Accused has consistently maintained that he was in possession of the disputed property and that he had acquired rights therein under registered sale deeds. In his statement under Section 313 of the Code of Criminal Procedure, he specifically stated that he had shown the sale deeds to the concerned authorities and had informed them that the land was in his possession. Significantly, he did not take a plea that he was absent from the spot. He also did not deny having interacted with the officials. His defence is narrower and more specific, namely that he asserted his possession and objected to the proposed measurement but did not commit any criminal obstruction.

33. The written submissions filed by the Complainant before the trial Court further indicate that the central grievance of the Complainant was not any act of violence, assault, intimidation or physical prevention on the part of the Accused. The consistent case advanced by the Complainant is that the Accused had no legal authority to resist execution of the possession warrant and that by objecting to the proceedings he prevented their completion.

34. There is no evidence on record that the Accused assaulted any official, threatened any official with bodily harm, restrained any official from movement or used force against any person present on the spot. The prosecution also does not allege any destruction of measurement instruments, damage to government property, removal of boundary marks or any overt act involving force. The allegation, in substance, is that the Accused asserted his independent claim over the property and opposed the proposed measurement.

35. The material on record further discloses that the Accused was claiming possession over the disputed land. The record also reveals that the execution proceedings had originated from civil litigation concerning rights over the property. The dispute, therefore, was not between a public authority and a stranger. It arose in the backdrop of a continuing contest regarding possession and entitlement to the land.

36. In ordinary human conduct, a person who claims possession of agricultural land and asserts rights under documents of title would naturally question attempts to measure the property or deliver possession to another person. Such conduct may ultimately be found to be legally unsustainable in appropriate civil proceedings. However, every assertion of a civil claim cannot automatically be elevated to the level of a criminal offence. Courts are required to distinguish between unlawful resistance amounting to a crime and a claim, however weak, put forward in assertion of a purported civil right.

37. The evidence on record does not satisfactorily establish that the Accused did anything beyond asserting his claim over the property and objecting to the proposed action. The prosecution witnesses may have perceived such conduct as an obstruction, but criminal liability cannot rest merely upon characterisation of conduct by a witness. The Court is required to examine the substance of the act proved. Upon such examination, the evidence discloses a dispute regarding possession and authority rather than an intentional obstruction of the nature contemplated under criminal law.

38. Even otherwise, a substantial legal impediment exists in the matter of prosecution under Section 186 of the Indian Penal Code. Section 195(1)(a) of the Code of Criminal Procedure expressly places a restriction upon the power of a Court to take cognizance of offences punishable under Sections 172 to 188 of the Indian Penal Code except upon a complaint in writing of the concerned public servant or of another public servant to whom he is administratively subordinate.

39. In the present case, admittedly the complaint was not instituted by the Measurement Officer, the Bailiff or the police personnel who are alleged to have been obstructed. The complaint was filed by the Complainant in his individual capacity. The complaint itself proceeds on the footing that the concerned officials did not initiate action and that the Complainant was therefore compelled to approach the Court. The statutory bar created by Section 195 of the Code of Criminal Procedure thus squarely comes into operation.

40. The consequence is that even if the prosecution evidence is accepted at its highest value, conviction under Section 186 of the Indian Penal Code cannot be sustained in the absence of a complaint by the public servant concerned or by a competent superior authority as contemplated by law.

41. The Court now turns to the allegation under Section 427 of the Indian Penal Code. Section 427 is an aggravated form of the offence of mischief defined under Section 425 of the Indian Penal Code. For attracting the said provision, it is necessary to establish destruction of property, change in property or change in its situation resulting in diminution of value or utility, or causing injury to the property, coupled with the requisite intention or knowledge.

42. The evidence of PW-1 and the written submissions filed by the Complainant clearly disclose the nature of the loss allegedly suffered by him. The loss claimed consists of measurement charges, police protection charges, Special Bailiff fees, labour charges and other incidental expenses incurred for execution proceedings.

43. No witness has stated that the Accused destroyed any movable or immovable property. No evidence has been adduced regarding destruction of crops, damage to boundaries, damage to implements, removal of structures or diminution in value of any property. There is equally no evidence that the utility of any property was impaired by any act attributable to the Accused.

44. The grievance of the Complainant essentially is that the expenses incurred by him became futile because the proposed measurement was not completed on the scheduled date. Such expenditure may indeed have caused inconvenience and financial burden. Nevertheless, every financial burden or economic disadvantage does not amount to mischief within the meaning of Section 425 of the Indian Penal Code.

45. The concept of wrongful loss contemplated by the Penal Code cannot be divorced from the statutory ingredients of mischief. In the absence of destruction, diminution in value or injury to property, the expenditure incurred by the Complainant in anticipation of execution proceedings cannot by itself satisfy the essential ingredients of Section 425, much less Section 427 of the Indian Penal Code.

46. The Court is therefore unable to hold that the prosecution has established beyond reasonable doubt either the offence punishable under Section 186 of the Indian Penal Code or the offence punishable under Section 427 of the Indian Penal Code. At the highest, the evidence discloses a dispute arising in the course of execution of civil proceedings and an objection raised by a person claiming possession over the property. The evidence falls short of proving the criminal offences alleged.

47. Accordingly, Point No.1 and Point No.2 are answered in the Negative.

As to Point No. 3

48. While deciding Point Nos.1 and 2, this Court has independently reappreciated the entire oral and documentary evidence available on record. The findings recorded by this Court substantially coincide with the conclusions reached by the learned trial Magistrate.

49. The learned Magistrate noticed that the complaint merely alleged obstruction, whereas during evidence the Complainant attributed specific words to the Accused to the effect that he would neither hand over possession nor permit measurement. The trial Court treated the same as a material omission affecting the prosecution case. Having regard to the nature of the allegation, such appreciation cannot be said to be either unreasonable or contrary to the record.

50. The learned Magistrate further found that the Accused was claiming possession over the disputed property and had asserted such claim before the officials present on the spot. The evidence on record discloses that the Accused had consistently taken such defence. Therefore, the conclusion reached by the trial Court that the conduct attributed to the Accused amounted to assertion of a claim rather than criminal obstruction is a possible and reasonable view emerging from the evidence.

51. The trial Court also held that prosecution under Section 186 of the Indian Penal Code was barred in view of Section 195 of the Code of Criminal Procedure, since the complaint was admittedly not instituted by the concerned public servant. The said conclusion is in consonance with the statutory mandate and does not suffer from any legal infirmity.

52. While dealing with the offence punishable under Section 427 of the Indian Penal Code, the learned Magistrate correctly examined the ingredients of mischief and found absence of any evidence regarding destruction of property, diminution in value of property or injury to property. The finding that expenditure incurred towards measurement, police protection and execution proceedings would not by itself constitute mischief is legally sustainable.

53. Thus, the material findings recorded by the learned Magistrate are based upon evidence available on record and correct application of legal principles. Neither perversity nor misreading of evidence nor omission to consider any material circumstance is demonstrated before this Court.

54. Consequently, the judgment of acquittal dated 06.02.2019 passed by the learned Judicial Magistrate First Class, Dhamangaon Railway does not warrant appellate interference. In the light of this discussion, Point No.3 is answered in the Negative.

As to Point No. 4:

55. In view of my findings to Point Nos. 1 to 3, the appeal will have to be dismissed and judgment and order of acquittal passed by the

learned Trial Magistrate will have to be confirmed. Thus, in answer to Point No. 4, I pass the following order.

ORDER

- 1) The Criminal Appeal stands dismissed.
- 2) The judgment and order dated 06.02.2019 passed by the learned Judicial Magistrate First Class, Dhamangaon Railway in Summary Criminal Case No.218/2014 acquitting the Accused of the offences punishable under Sections 186 and 427 of the Indian Penal Code is hereby confirmed.
- 3) The bail bonds furnished by the Accused pursuant to Section 437-A of the Code of Criminal Procedure shall stand discharged upon expiry of the statutory period, if not already discharged in accordance with law.
- 4) Record and Proceedings be sent back to the trial Court along with a copy of this judgment.

Dt. 05.06.2026

(Yashwant A. Goswami)
Additional Sessions Judge-2,
Amravati