

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3004 OF 2014
(The State of Maharashtra Vs. Nita Vasant Gosar and another)

Mr. V.P. Kadam, A.P.P. for the applicant/State
Mr. S.B. Bhosale, Advocate holding for Mr. S.P.
Brahme, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 16/07/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the recording of acquittal of the present respondents, from the offences punishable under section 430 and 506 of the I.P. Code and under section 29 of the Maharashtra Rent Control Act, by the learned Judicial Magistrate First Class, Dhule, vide order dated 30.12.2013, passed in R.C.C. No. 514/2005, the applicant/State wants to prefer the appeal and therefore, the present application for grant of leave to file appeal is filed.
3. The prosecution case, in nutshell, is as under:-

. That, complainant Miss Anita alongwith her family members was residing in the three rooms tenament owned by the present respondents at Dhule, as described in the complaint. On 24th May, 2005, complainant Anita and other family members were away and when they returned at about 1.00 a.m., she found that latrine, kitchen wall of the tenament were damaged while the drinking water pipeline, drainage were broken. The telephone cable was also cut. She came to know that this was done by the present respondents with the help of J.C.B. machine. Therefore, she approached the respondents for restoration. At that time, they threatened to kill her and therefore, the complaint came to be filed.

4. Before the learned Judicial Magistrate First Class, two witnesses were material i.e. PW2 Ismail Ahmad and PW4 Shakilabano who were claimed as eye witnesses of the prosecution. PW2 Ismail told the name of the respondent No. 2 as Anita though her name is Nita. His cross-examination would show that these respondents reside in another locality at Dhule than the

place of business of PW2 Ismail which is in the vicinity of the present disputed premises. Further he deposed that he was acquainted with these respondents for a period of 12 to 13 years preceding the incident. However, he further deposed that he did not know as to who was the owner of the disputed premises.

5. As regards PW4 Shakilabano, she even went on to state that she did not know as to whether the present respondents were present at the place and therefore, by guesswork, she has deposed that Nita was present in the court hall.

. Considering all these facts, the learned Judicial Magistrate First Class extended benefit of reasonable doubt to the respondents.

6. Upon hearing both sides, it is clear that the learned Judicial Magistrate First Class has taken reasonable and probable view of the material before him. In the circumstances, grant of leave to file appeal would be an exercise in futility. In the result, the following order:-

7. The present criminal application is dismissed.

[M.T. JOSHI]
JUDGE

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