

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (MAIN) NO. 194 OF 2014**

CIVIL JUDGE,VASCO - GOA.

... Applicant

Versus

RAMSEVAK R.BIND,VASCO DA GAMA,GOA.

... Respondent

Shri Mahesh Amonkar, Additional Public Prosecutor for the Applicant.

CORAM:- C. V. BHADANG, J.**DATE:- 7th APRIL, 2015****ORAL ORDER:**

Heard Shri Amonkar, learned Additional Public Prosecutor for the applicant. None for the respondent.

2. This is an application for grant of special leave to appeal against the order of acquittal of the respondent.

3. The facts necessary for the disposal of the present application may be stated thus:

That the respondent had filed a Special Civil Suit No.

102/1993 alongwith Civil Miscellaneous Application No. 122/1993, for grant of temporary injunction, before the Civil Judge Senior Division, Vasco. That suit was filed against Mormugao Municipal Council. It appears that the said civil suit was dismissed as withdrawn on 13.08.1993.

4. The case of the respondent in the civil suit was that he had obtained a license from the Municipal Council on 24.06.1993, to reconstruct a stall/gada which was situated near the municipal garden.

It appears that while permitting the suit to be withdrawn, the then learned Civil Judge Senior Division, Vasco found that there was no such stall in existence at the time of filing the suit. In other words, the learned Judge found that the allegations by the respondent that the stall was in existence near the municipal garden, was false and was made only to obtain an ex-parte order. It was found that the respondent made a statement in affidavit dated 11.08.1993, to the effect that the Municipal Council had threatened that they will demolish/dismantle the stall, allegedly situated near the municipal

garden. It was found that this allegation was made to mislead the Court.

5. In the face of such a finding, the then Civil Judge Senior Division filed a complainant under Section 193 of the Indian Penal Code (I.P.C., for short), before the learned Judicial Magistrate First Class at Vasco, which was registered as Criminal Case No. 3/S/1994. It further appears that by judgment and order dated 19.09.2002, the respondent came to be convicted for the offence punishable under Section 193 of I.P.C. and was sentenced to imprisonment for three months and to pay a fine of Rs.1,000/-. Feeling aggrieved, the respondent filed Criminal Appeal No. 48/2002, before the learned Additional District Judge, South Goa, Margao. By a judgment and order dated 17.01.2004, the appeal came to be allowed and the respondent has been acquitted. It appears that the then Civil Judge Senior Division, Vasco, filed the present application for special leave to appeal against acquittal.

6. Perusal of the record shows that the name of the Civil Judge Senior Division and Judicial Magistrate First Class, Vasco has

since, been deleted and the matter is now prosecuted on behalf of the State.

7. It is submitted by Shri Amonkar, learned Additional Public Prosecutor that the respondent had filed an affidavit claiming that the stall/gada was situated near the municipal garden, which was apparently false and was made only to obtain an order of injunction. Subsequent withdrawal of the suit would show that, the respondent was aware that the statement was false. It is further submitted that the learned Additional Sessions Judge, was in error in interfering with the order of acquittal. He therefore submitted that leave to appeal may be granted.

8. I have considered the submissions. I have gone through the record and the impugned order passed by the learned Additional Sessions Judge.

9. The learned Additional Sessions Judge has noticed in paragraph 8 of the judgment, that no ex-parte temporary injunction was granted by the Civil Court and show cause notice

was issued to the Municipal Council. On the day when the matter was kept for appearance, the respondent/accused filed an application for withdrawal of the suit. At that time, the learned Counsel appearing for the Municipal Council made a statement that there is no stall in existence at the place i.e. near municipal garden, as claimed by the respondent. A prayer for holding site inspection to verify the fact was also made. The learned Additional Sessions Judge has thereafter noticed that there was neither inspection carried out by the Presiding Officer as to the existence of the stall, nor any officer was deputed to verify the physical existence of the same. It has also been noticed that on behalf of the Municipal Council, there was no objection for withdrawal of the suit. The learned Additional Sessions Judge thus found that, there was merely a statement on behalf of the Municipal Council, on instructions, that the stall was not in existence at the place, as claimed by the respondent. The learned Additional Sessions Judge has further found that the best possible way to verify the correctness or otherwise of such statement, was to send any Officer or the Bailiff, which was not availed of. It was also found that, since the suit was allowed to be withdrawn, the

Civil Court became functus officio, although the power to lodge a complaint for filing false affidavit, would be distinct. The learned Additional Sessions Judge also noticed that some photographs were produced, which shows existence of the stall near the garden. In such circumstances, it was all the more necessary to verify the said fact by spot inspection.

10. The learned Additional Sessions Judge has then went upon examining the scope and ambit of the offence as defined under Section 191 of Chapter XI of I.P.C. It has further been found, on the basis of cross examination of PW-1, namely, the then learned Civil Judge Senior Division at Vasco, that there was no written statement or reply filed by the Municipal Council. The Municipal Council in the suit did not produce any documentary evidence to show that the stall was in existence at a different place, than claimed by the respondent.

PW-2 who was an employee of the Mormugao Municipal Council had neither in examination in chief, nor in the cross examination, stated that the stall was not in existence near the municipal garden, on the day of filing of the suit.

11. The learned Additional Sessions Judge also found that merely because the suit was withdrawn cannot lead to inference that allegations in the suit and application for temporary injunction were false. On consideration of the entire material on record, the learned Additional Sessions Judge has come to the conclusion that the conviction cannot be sustained.

12. In such circumstances, I do not find that the findings suffer from any infirmity, which needs interference. It is trite that the scope for interference with the order of acquittal is limited. In the absence of any compelling reasons, I do not find any interference is called for.

13. In the result, the application is dismissed.

C. V. BHADANG, J.

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