

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISCELLANEOUS APPLICATION NO. 216 OF
2015

Shri Vishnu C. Gaonkar,
s/o late Chandru Gaonkar,
major of age, landlord,
r/o Ghodkem, Balli,
Quepem, Goa ... Applicant

Versus

1. Shri Ram Yessu Gaonkar,
s/o late Yessu Gaonkar,
major of age, agriculturist,
and his wife,
2. Smt. Sita Ram Gaonkar,
Major of age, housewife,
Both r/o Tanassi, Loliem,
Canacona, Goa.
3. The State through
the Public Prosecutor,
Panai-Goa. ... Respondents

Mr. R. G. Ramani, Advocate for the applicant.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the respondent nos. 1 and 2.

CORAM :- C. V. BHADANG, J.

Date : 5th December, 2015.

ORAL ORDER :

By this application, the applicant/ original complainant
is seeking leave to appeal against acquittal.

2. The applicant filed a private complaint against the respondent nos.1 and 2, being Criminal case No.84/P/2009/I in the Court of Judicial Magistrate, First Class (JMFC) at Margao, alleging commission of offences under Sections 191, 416 and 420 of I.P.C. According to the applicant/ complainant, there existed a property better known as, "Tanasso", situated at Ward Tansi, village Loliem, Canacona, Goa, which is surveyed under Survey No.328. As per Form I and XIV, the property was standing in the name of Janu Gaonkar and Laxman Rama Gaonkar. The applicant claims to be the son of Janu Gaonkar (since deceased). Indisputably, the names of other persons, namely Yesso Rama Gaonkar and others also figured in the occupant's column of the Survey Record, pertaining to Survey No.328/1.

3. It appears that there were acquisition proceedings initiated in respect of the land Survey No.328/1 for the purposes of widening and improvement of NH-17. The matter ultimately reached the Reference Court, in L.A.C. No.55/1988, in which, apart from the applicant, the respondent nos.1 and 2 were party nos.3a to 3b. The gravamen of the allegations in the complaint was that while filing the written statement before the Reference Court, the respondent nos.1 and 2 had falsely claimed that the respondent no.1 was the son of Yesso Rama Gaonkar. It was

contended that the respondent no.1 also examined himself in the Land Acquisition Case, falsely claiming that he is the son of Yesso Rama Gaonkar. The reference was decided on 05/06/2002 and that award was challenged before this Court and the appeal filed before this Court is already decided. The applicant further alleged in the complaint that by misusing the judgment and award in the reference case, the respondent nos.1 and 2 are staking claim to the consideration in respect of various sale deeds executed in respect of part of the suit property, in favour of M/s. Gold Resorts Hotel Private Limited. The said sale deeds have been challenged by the respondent nos.1 and 2 in Special Civil Suit No.28/2007.

4. It was the material contention of the applicant before the learned Magistrate that some time in April, 2009, the applicant on the basis of birth and marriage certificate of the respondent no.1, found that the name of the father of the said respondent is recorded as Yessu Ganesh Gaonkar. It further records that Yashoda Yessu Gaonkar is the mother of the first respondent. This led the applicant to file the complaint as aforesaid, before the learned Magistrate for the offences of forgery, cheating by impersonation and fraud.

5. It appears that the applicant examined himself (PW1)

while on behalf of the respondents, the respondent no.1 examined himself along with two other witnesses. The learned Magistrate, by an elaborate judgment and order dated 30/03/2015, has acquitted the respondent nos.1 and 2, while dismissing the complaint. Feeling aggrieved, the applicant is before this Court.

6. I have heard Shri Ramani, the learned Counsel for the applicant and Shri Usgaonkar, the learned Senior Counsel for the respondent nos.1 and 2. With the assistance of the learned Counsel for the parties, I have perused the impugned order, as also the evidence on record.

7. It is submitted by Shri Ramani, the learned Counsel for the applicant that on the basis of the birth as also, the marriage certificate of the first respondent, it is apparent that the name of the father of the first respondent is Yessu Ganesh Gaonkar and not Yesso Rama Gaonkar. It is submitted that thus, the claim of the first respondent that he is the son of Yesso Rama Gaonkar is apparently false. It is submitted that the first respondent had entered the witness box in the reference case, claiming to be the son of Yesso Rama Gaonkar and is staking a claim to the consideration of some sale deeds executed in respect of the property. It is submitted that thus, the offences under Section 416

and 420 as also under Section 191 of IPC, were clearly made out. The learned Counsel has, in particular, referred to the evidence of DW3 Paik Devy Gaonkar, in which the said witness has stated that he was not aware whether Yesso Rama Gaonkar was also known as Yessu Ganesh Gaonkar. It is, thus, submitted that the claim of the respondent no.1 about he being the son of Yesso Rama Gaonkar, stood falsified on the basis of the defence evidence itself. It is submitted that the learned Magistrate has failed to properly appreciate the circumstances and the evidence on record and the acquittal is a result of misreading and misappreciation of the evidence, which would tantamount to perversity, requiring interference.

8. On the contrary, it is submitted by Shri Usgaonkar, the learned Senior Counsel for the respondent nos.1 and 2 that the scope of interference available, in a challenge of the present nature, is limited. It is submitted that unless and until it is shown that the view taken by the Trial Court is perverse or not borne out of the evidence on record, no interference is called for. It is submitted that even in a case where two views are equally possible, this Court, while entertaining an appeal against acquittal, is not expected to substitute a view other than the view taken by the Trial Court, on the ground that it is more plausible.

9. It is submitted that the learned Magistrate, after appropriately appreciating the circumstances and the evidence on record, has rightly come to the conclusion that no offence is made out. The learned Senior Counsel would also submit that an offence of the present nature would fall under Chapter XI of IPC, pertaining to the offences against public justice. It is submitted that in such a case, the applicant would have no *locus standi* to file a complaint. He, therefore, submitted that the application be rejected.

10. I have given my anxious consideration to the rival circumstances and the submissions made.

11. At the outset, it needs to be stated that what is alleged is basically with regard to certain case made out in a judicial proceeding and also there are allegations about giving false evidence. In that view of the matter under Section 195 of Cr.P.C., it is for the Court to take cognizance and initiate appropriate proceedings. This aspect has been considered by the learned Magistrate in para 36 onwards of the judgment. The learned Magistrate has then gone on considering the allegations in the complaint, with reference to the individual offences alleged and it

has been found, and to my mind rightly so, that the applicant has failed to establish any dishonest intention or of causing a wrongful loss to the applicant, which is a necessary ingredient of the offence under Section 420 of IPC.

12. It would be further significant to note that in so far as the discrepancy in the names of “Yessu” and “Yesso” is concerned, the learned Magistrate has noticed that the applicant has admitted that Yessu and Yesso pertain to one and the same person.

13. Even so far as the argument based on certain portion of the cross-examination of DW3 is concerned, it has been found that the real issue was whether the first respondent is the son of Yesso Rama Gaonkar and not whether Yesso Rama Gaonkar was also known as Yessu Ganesh Gaonkar.

14. It is now well settled that the scope of interference available in a challenge against acquittal is quite limited. Unless and until it is shown that the view taken by the Trial Court is based on misappreciation of the evidence on record and is perverse, no interference is called for. On going through the impugned judgment and order, I find that the view taken by the learned Magistrate is a plausible view, on the basis of the

available evidence on record. In that view of the matter, no case for grant of leave to appeal against acquittal is made out. As such, the application is hereby dismissed.

C. V. BHADANG, J.

SMA