

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL(STATE) NO.45 OF 2014

The State of Maharashtra	...	Applicant
V/s.		
Sau. Vimal Parasnath Khaire & Anr.	...	Respondents

.....

Mrs.S.V.Gajare, APP for the Applicant/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 6TH FEBRUARY, 2015

P.C.

1. By this application, the State of Maharashtra is seeking leave to appeal from the Judgment and Order passed by the Judicial Magistrate, First Class, Panvel in Regular Criminal Case No. 611 of 2009 before him, whereby the learned Magistrate acquitted the respondents herein, who were the accused in the said case.

2. I have heard Mrs.Gajare, the learned Additional Public Prosecutor for the applicant/State. With her assistance, I have gone through the application and a copy of the impugned Judgment that is annexed thereto.

3. The allegation against the respondents was that they had committed offences punishable under Sections 323, 324 and 504 of the Indian Penal Code read with Section 34 of the IPC. The case of the prosecution was that, there was some dispute between the respondents and the First Informant – Rupali Shinde, who were neighbours. It appears that some quarrel took place between them, as the accused made an allegation against the First Informant that she was attempting to do 'black magic' on the accused. In the quarrel that took place, the respondent No.1 allegedly twisted the left hand of the First Informant causing a fracture to a finger of that hand.

4. The learned Magistrate observed that, the witnesses, who were stated to be the eye-witnesses, did not support the case of the prosecution, which was to the effect that the respondents had beaten the First Informant with fists. The learned Magistrate observed that the evidence of the First Informant, in that regard, remained uncorroborated. The Magistrate also observed that there was discrepancy in the evidence as regards *to which finger* a fracture is caused. The Magistrate noted the discrepancy in that regard, that arose on comparing the medical evidence with that of the evidence of First Informant, in paragraph Nos.13,14 and 15 of the impugned Judgment.

5. Considering the evidence that was adduced, the Magistrate doubted the truth of the prosecution version. The Magistrate expressed doubts about certain other aspects of the prosecution case, as well, which are reflected in paragraph Nos.20 and 21 of the impugned Judgment.

6. The view of the evidence adduced before him, as taken by the Magistrate, cannot be said to be suffering from any illegality or impropriety. In any case, the view of the matter as taken by the Magistrate is a possible view. It is well settled that in such a case, grant of leave would be futile.

7. Leave refused.

8. The application is rejected.

(ABHAY M. THIPSAY J.)