

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE SIDE**

**APPLICATION FOR LEAVE TO APPEAL(STATE) NO.29 OF 2015**

State of Maharashtra ... **Applicant**

V/s.

Geeta Ashok Singh ... **Respondent**

....

Ms.Anamika Malhotra, APP for the Applicant/State.

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**CORAM : ABHAY M. THIPSAY J.**

**DATED : 20TH MARCH 2015**

**ORAL ORDER :**

1. The respondent was prosecuted on the allegation of having committed an offence punishable under Section 325 of the Indian Penal Code. The case against the respondent arose out of the report lodged by one Smt.Gayatri Sharma, pursuant to which investigation commenced and the respondent came to be prosecuted. The Metropolitan Magistrate, 35<sup>th</sup> Court, Vikroli, after holding a trial found the respondent not guilty and passed an order of acquittal. The State of Maharashtra is aggrieved by the said order of acquittal and is, by the present application, seeking leave to appeal therefrom.

2. With the assistance of the learned APP, I have gone through the application and the impugned judgment, copy of which is annexed to the application.

3. Only three witnesses were examined during the trial. The first one was the First Informant Smt. Gayatri Sharma, a Social Worker. The case was that the First Informant had gone to the respondent (hereinafter referred to as, 'the accused') for questioning her in connection with the conduct of the son of the accused. The accused caught hold of the hand of the First Informant and twisted it due to which a fracture to one of the fingers of the First Informant was caused.

4. To prove the fracture injury sustained by the First Informant, one Doctor Rajesh Anand Dhepe was examined. However, he was not the one who had examined the First Informant. X-ray purportedly taken of the right hand ring finger of the First Informant was produced. But the Magistrate observed that no entry in respect of the First Informant was recorded in the MLC Register. The Magistrate also observed that the injury as referred to in the Medical Certificate produced before the Court could be possible by some other means also. (and not necessarily by twisting of the arm)

5. The Investigating Officer admitted that on the basis of the OPD papers, the First Informant was supposed to have sustained injury to her last finger of right hand, but actually the injury had been sustained to the ring finger. The OPD papers did not mention anything about any fracture injury suffered by the First Informant.

6. The Magistrate's conclusion, that the evidence of the First Informant could not be treated as trustworthy, appears to be proper. In any case, the Magistrate's conclusion, that the prosecution had failed to prove the guilt of the accused beyond reasonable doubt, does not seem to be suffering from any error or infirmity.

7. Leave refused.

8. The application is rejected.

**(ABHAY M. THIPSAY J.)**