

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 135 OF 2015

Ashok Govind Kate .. Applicant
Versus
Hiraji Dharma Patil and anr .. Respondents

Ms.Mugdha J. Patil, Advocate for the applicant.

Mrs.Anamika Malahotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 7th APRIL, 2015

P.C. :

1 The applicant is the original complainant. He had prosecuted the respondent no.1 herein on the allegation that the respondent no.1 had committed offences punishable under section 465 IPC, 471 IPC, 472 IPC and 473 of the IPC. After recording evidence, charge in respect of offences punishable under section 465 of the IPC and 473 of the IPC, was framed against the respondent no.1, but the trial ultimately resulted in his acquittal. The applicant is aggrieved by the said order of acquittal, as passed by the Judicial Magistrate First Class, Pen, by a judgment and order dated 21st February 2015. He is, therefore, by the present application seeking leave to Appeal from the said order of acquittal.

2 I have heard Ms.Mugdha Patil, learned counsel for the applicant in support of the application. With her assistance, I have gone through the application and the annexures thereto.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as the 'complainant' and the respondent no.1 as the 'accused'.

4 The accused was the Chairman of the *Raigad Zilla Madhyamik Va Uchha Madhyamik Vidyasevak Sahakari Patsanstha Limited*, (hereinafter referred to as 'the said Patsanstha') till 24th October 2011. Thereafter, the complainant became the Chairman of the said *Patsanstha*. The elections of the Board of Directors of the said *Patsanstha* were held on 25th September 2011, and thereafter, the office bearers were elected in a meeting of the newly elected Directors held on 25th October 2011.

5 The substance of the complaint is that in spite of ceasing to be the Chairman of the said *Patsanstha*, the accused continued to sign as 'Chairman' on various documents. The allegation is that the accused has got printed letter heads in the name of the said *Patsanstha*, and also has got prepared bogus rubber stamp of the *Patsanstha*, and of the position of the Chairman.

6 In spite of the allegation that the accused habitually and regularly signs as a Chairman, and consequently, commits forgery, there was only one letter that could be produced before the trial court in which the accused had signed as a Chairman after

the complainant supposedly became the Chairman of the said *Patsanstha*.

7 I have examined the said letter which is annexed to the present application. This letter appears to have been addressed to one Tukaram Khandekar – a newly elected Director of the said *Patsanstha*, making allegations against the said Tukaram Khandekar and the other newly elected Directors. In the said letter, the accused appears to have called upon the newly elected office bearers to stop their illegal activities and illegal expenditure, and has threatened that otherwise, appropriate legal action would be initiated against them.

8 I have carefully gone through the impugned judgment.

9 The learned Magistrate observed that there was some doubt about whether the letter in question was indeed received by the said Tukaram. The reasons for that doubt are found in paragraph nos.12 and 13 of the impugned judgment.

10 The Magistrate noted that there was some dispute about the legality and/or propriety of the election process of the office bearers which was said to have taken place on 25th October 2011. The Magistrate noted that, in any case, there existed a dispute on the issue.

11 The Magistrate came to the conclusion that no dishonest intention could be attributed to the accused.

12 I find that the Magistrate's observation that there has been a rivalry between the complainant and the accused, and that, they have made allegations against each other, but the nature of the dispute between these two persons is primarily civil, is proper.

13 After carefully considering the facts of the case, it appears to me that the accused is openly claiming the complainant to be improperly elected. The accused is claiming that the office bearers of the said *Patsanstha*, are not holding their respective offices, validly and legally. Such type of open allegations by the accused claiming himself to be entitled to act as a Chairman of the said *Patsanstha*, by writing to the members of the newly elected Board of Directors indicate that there is a dispute of civil nature between the parties. In the facts and circumstances of the case, even if the accused has signed as a Chairman of the said *Patsanstha*, such act cannot be said to have been done by him, *dishonestly*, or fraudulently, within the meaning assigned to these terms by sections 24 and 25 of the IPC.

14 The view of the matter, as taken by the Magistrate, is proper and legal. In any case, it is a *possible view* of the matter.

15 It is well settled that in such a case, grant of leave to Appeal, would be futile.

16 Leave refused.

17 Application is rejected.

(ABHAY M.THIPSAY, J)