

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL(STATE) NO.57 OF 2014

State of Maharashtra ... **Applicant**
 V/s.
 Sanjay Sadanand Prabhu ... **Respondent**

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Mr. Deepak Thakre, APP for the Applicant/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 20TH FEBRUARY, 2015

P.C.

1. On a report lodged by one Smt.Snehankita Gopal Samant, the respondent herein was charged and prosecuted for having committed offences punishable under Section 354, 504 and 506 of the Indian Penal Code. The learned Judicial Magistrate, First Class, Kudal after holding a trial, found him guilty of offence punishable under Sections 354 and 504 of the Indian Penal Code and sentenced him to suffer Simple Imprisonment for four months and to pay a fine of Rs.2,000/- for the first mentioned offence and Simple Imprisonment for one month and to pay a fine of Rs.500/- for the latter offence. The respondent appealed to the Court of Sessions challenging his conviction and sentences imposed by the learned Magistrate. The

learned Sessions Judge, who heard the appeal, allowed it and by reversing the judgment of conviction, acquitted the respondent. The State of Maharashtra is aggrieved by the said appellate order of acquittal and is, by the present application, seeking leave to file an appeal therefrom.

2. With the assistance of the learned Additional Public Prosecutor, I have gone through the application and carefully examined the judgment delivered by the learned Magistrate, as also the appellate judgment of the acquittal passed by the learned Sessions Judge.

3. The allegation against the respondent (hereinafter referred to as, 'the accused' for the sake of clarity) was that, while the First Informant Smt.Snehankita and her husband were going in her car from the Walwal Market, the respondent, who was standing along with another persons in front of the office of Grampanchayat, abused the First Informant and outraged her modesty. The accused had abused the First Informant and, therefore, she had got down from the car and it is, thereafter, that the accused came running towards her and caught her hand. When the husband of the First Informant and one Shankar Bange came there, the accused left her hand, but continued to abuse her till he was removed from that place by his brother one Rajesh Prabhu.

4. The Magistrate believed the evidence of the First Informant and convicted the accused as aforesaid.

5. The learned Sessions Judge felt doubt about the truth of the prosecution version for the following reasons :

- (i) The learned Sessions Judge observed that the incident had allegedly taken place, when First Informant was accompanied by her husband; and when such was the situation, it was expected of the husband of the First Informant to have reacted in some way to the incident, at that time itself. However, the evidence adduced did not show any reaction on the part of First Informant's husband at the time of incident.
- (ii) The learned Sessions Judge observed that the incident had taken place at about 11.00 a.m. and the First Information Report came to be lodged only at about 5.00 p.m. The learned Sessions Judge observed that admittedly at about 1.05 p.m., report in respect of a non-cognizable offence had been lodged by the accused against the First Informant and her husband. The learned Sessions Judge, in this context, considered the possibility of the FIR having been lodged as a counterburst to the report made by the accused.

(iii) The learned Sessions Judge also observed that there was some rivalry between the husband of the First Informant and the accused over the management of Laxmi Narayan Devsthan, but, that there was such rivalry, was attempted to be suppressed by the First informant.

(iv) The learned Sessions Judge also observed that only those eye-witnesses, who could be termed as interested witnesses, were examined by the prosecution.

8. It is for all these reasons that the learned Sessions Judge felt a doubt about the truth of the prosecution version and thought it fit to grant benefit of doubt to the accused.

9. The view of the matter as taken by the learned Sessions Judge appears to be proper. The doubt about the truth of the prosecution case as felt by the Sessions Judge was reasonable. It indeed arose out of the evidence that was adduced before the trial Court.

10. Since the view taken by the learned Sessions Judge appears to be proper, there is no question of granting leave to file an appeal from the order of acquittal passed by him.

11. Leave refused.

12. The application is rejected.

(ABHAY M. THIPSAY J.)