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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 598 OF 2015

Smt. Muniba Imran Afridi

.. Appellant

Vs.

The State of Maharashtra and ors.

.. Respondents

Mr. Shrinivas Bobde i/by Mr. Gaurav Parkar for appellant.
Dr. F. R. Shaikh, APP for State.

CORAM: B. P. DHARMADHIKARI &
A. S. GADKARI, JJ.

AUGUST 05, 2015.

P.C.

1. Learned counsel Mr. Gaurav Parkar was heard in first half and thereafter arguments of learned APP were also heard. Question raised by Advocate Mr. Parkar was, the Special Judicial Magistrate who recorded statement of PW 6 ought to have been examined by the prosecution before trial court to point out the correctness of statement of said PW 6 recorded by him and to support his police statement.

2. Learned APP then pointed out the observations of trial court that statement so recorded by any Special Judicial Magistrate being not in accordance with Section 164 of Cr. P.C., it has no legal sanctity in a trial court against accused persons.

3. At that stage, Mr. Parkar was given adjournment as requested by him till 3 p.m. to enable him to demonstrate that in State of Maharashtra Special Judicial Magistrate could have recorded statement under Section 164 of Cr. P. C.

4. The matter was then called out at 3 p.m. and learned counsel Mr. Parkar was then not available. We, therefore, kept back the matter. Matter has been called out again at 4.40 p.m. after part heard matter. Mr.Parkar is stated to be not available and his colleague Mr. Bobde is seeking adjournment till tomorrow. He submits that he has no instructions to argue the matter.

5. In this situation, we find that informant-complainant PW 5 himself has not supported the complaint. Trial court has considered this aspect in paragraph 12 of its judgment. It has found that this informant

(PW 5) Hitesh gave a complaint to Commissioner of Police on 20/2/2010 against Police Inspector Mr. Borkar that his signature was obtained on such complaint by force and he was asked to name accused no.1 for incident. He also admitted in his cross-examination that police obtained his signature on a blank paper and he does not know Marathi. He further stated that he had not seen who beat Rashid (deceased). Trial court found that this complaint dated 20/2/2010 was admitted to have been correctly recorded by PW 25 - Ramesh Madhavrao Pawar and as complaint at Exh. 149 was not admitted by complainant himself and there was no impeachment of his credit, the complaint at Exh. 149 and FIR at Exh. 150 cannot be said to have been duly established in evidence.

6. In the subsequent paragraph i.e. paragraph 13, it has looked into evidence of PW 6 – Yogendra. Yogendra deposed that on 16/2/2010 at about 6.30 p.m. he, Rashid Shaikh and complainant had gone to Hotel Radhika and all of a sudden someone gave a blow on his head from his back side and he fell down. He was given fist and kicks blows by 2-3 persons and sustained injuries on leg and hand. He denied portions marked as “A”, “B”, “C” and “D” in his statement to police during cross-examination by learned APP. He also declined to identify any accused

person in court hall. He also did not accept that on 3/3/2010 Special Judicial Magistrate recorded his statement. He expressed ignorance about his appearance in front of one V. N. Bhagwat, a Special Judicial Magistrate for said purpose.

7. It is in this background that above mentioned observations about the sanctity or otherwise of a statement recorded by Special Judicial Magistrate has come on record in judgment of trial court.

8. Discussion above shows that there is no perversity and the trial court has taken a possible view.

9. In appeal against acquittal, this court has got limited scope to interfere. We, therefore, find that no case is made out. Appeal rejected.

(A. S. GADKARI,J.)

(B. P. DHARMADHIKARI,J.)