

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.371 OF 2014

CHANDRAKANT DIGAMBAR KARKHANIS)...APPLICANT

V/s.

MADHUKAR VAMANRAO KARKHANIS & ORS.)...RESPONDENTS

Ms.Sucheta Mirrashi, Advocate for the Applicant.

Dr.Yug Choudhary a/w. Mr.Ajay Basutkar, Advocate for
Respondent Nos.1 and 2.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 23rd JANUARY, 2015.

P.C. :

1 The applicant had prosecuted respondent nos.1 and 2
herein, on the allegations that they had committed the offence
punishable under Section 420 of the Indian Penal Code (IPC) read
with Section 34 thereof. The Additional Chief Metropolitan
Magistrate, 24th Court, Borivali, Mumbai, after holding a trial, held

them not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal. He is, therefore, by the present application, seeking leave to file an appeal against the said acquittal.

2 I have heard Ms.Sucheta Mirrashi, the learned counsel for the applicant. With her assistance, I have gone through the impugned judgment. I have also gone through some of the annexures to the application.

3 The basic case of the applicant was that, his premises were transferred by him to respondent no.1. Later, the respondent no.1 transferred the same to respondent no.2, with the permission of the applicant. The case is that the respondents had agreed to re-transfer the premises to the applicant, after the applicant's daughter would attain marriageable age. That, the respondents backed out and refused to re-transfer the premises in the name of the applicant. That, there existed some record of the agreement / understanding between the parties, but the respondent no.2

dishonestly took away the file containing the relevant documents and falsely denied its existence.

4 It may be observed that the applicant's case itself appears to be basically of a breach of contract.

5 The reasons, as to why the Magistrate held respondent nos.1 and 2 to be not guilty, are found in paragraphs 17 to 21 of the impugned judgment. The learned Magistrate doubted the existence of any letter of assurance or agreement, supposed to have been executed by the respondents, assuring the applicant that the premises would be re-transferred to his name. The Magistrate also noted the abnormal delay in making the complaint to the Magistrate. The Magistrate came to the conclusion that the applicant had transferred the tenement in the name of respondent no.2 voluntarily and by executing due documents before the Competent Authorities, and that, therefore, it was not possible for the applicant to say that the respondents had dishonestly induced him to deliver the tenement.

6 The view of the matter, as taken by the Magistrate, does not appear to be suffering from any error, perversity or illegality. In any case, the view taken by the Magistrate is a possible view.

7 It is well settled that in such cases, grant of leave would be futile.

8 Leave refused. The application is rejected.

(ABHAY M. THIPSAY, J.)