

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.258 OF 2015

Smt. Kamlaben Amrutlal Mahyavanshi	..Applicant
<i>Versus</i>	
Vishnu Fakir Damania and others.	..Respondents

....
Mr. M.N. Dhamal i/b. Karan Thorat, for the Applicant.
Mrs. P.P. Bhosale, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 26th AUGUST, 2015

P.C.

1. Heard learned Counsel for the applicant. Also heard learned APP for the State.
2. This is an application for leave to file appeal challenging the acquittal of the respondents in the matter of offences punishable under Sections 342, 427, 143 read with Section 34 of IPC.
3. The impugned judgment and order was passed by the J.M.F.C., Daman on 22.4.2015 in a private complaint bearing No.123 of 2003 filed against the original five accused i.e. present

respondents. Said complaint was lodged on 9.10.2003 for the incident which occurred on 14.9.2003. Allegedly on that night the respondents/accused pelted stones and bottles on the adjoining house of the complainant woman. The roof of the house was made up of bamboo sticks. The roof was damaged. Also allegedly according to the complainant after the said incident of ransacking her house and causing damage, when she started going to the police station for lodging the complaint, the accused persons stopped her from doing so and obstructed her way and apparently also confined her in the house.

4. It is an admitted position that though allegedly after the said incident on that night, according to the complainant, some police persons were present and inspected the place, they were not examined as witnesses during the trial in the private complaint. So also panch witnesses were not examined in the complaint though allegedly some panchnama was drawn regarding destruction of the house. Even it is observed by the trial Court that the complainant witness Nos.2 and 3 did not support the case of the complainant inasmuch as in the cross-examination they have admitted that the names of the accused

persons were given to them by the complainant woman and that accused were strangers to them. According to witness No.2 after the incident he accompanied the complainant to the police station. However, according to the complainant witness No.1 herself, only her son accompanied her to the police station and not anybody much less the witness No.2. The trial Court has also observed that one witness No.3 was recalled but he was not produced before the trial Court for his re-examination. The trial Court also observed that witness No.4 was not cited as a witness and was examined subsequently.

5. What influenced the trial Court was pendency of civil disputes and other chapter court proceedings between the parties and also what influenced the trial Court was the factual position that the accused persons were acquitted of the offences of defamation in the complaint lodged by the complainant woman and her relations.

6. Considering the reasoning given by the trial Court and considering the substantive evidence of the complainant witnesses, in the opinion of this Court there is nothing to take different view than that taken by the trial Court and to reagitate

the matter by allowing the complainant to challenge the order of acquittal. Moreover, there is nothing to come to the conclusion that the order of the trial Court acquitting the respondents / accused is of such a pervert nature so as to be interfered with. In that view of the matter, there is nothing to allow the present application for leave to file appeal and the same is accordingly dismissed and disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)