

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 478 OF 2015
(For condonation of delay)

Harshad Pranshankar Vyas ..Applicant.

Versus

Shabbir Sheikh and others ..Respondents.

Mr A.H.Gajbhiye, Advocate for the Applicant.

Mrs PP. Bhosale, APP for the State.

CORAM : A.R.JOSHI,J
DATE : 15 September,2015.

P.C. :

1) Heard the learned counsel for the applicant on the application for condonation of delay of one day in preferring the appeal challenging the acquittal of the respondent nos. 1 and 2 in the matter of offence punishable under section 420 of IPC. For the reasons mentioned in the application, the delay of one day is condoned. The application is allowed and disposed of. Office to number the application for leave to file appeal.

- 2) By consent of parties, the application for leave to file appeal is taken up for final hearing and disposal.
- 3) Heard the learned counsel for the applicant in this application for leave to file appeal challenging the acquittal of respondent nos. 1 and 2 in the matter of offence punishable under section 420 of IPC. The impugned order dated 15th May, 2015 was passed by JMFC, Vashi at Belapur, Navi Mumbai in a private complaint bearing R.C.C. No. 1786/1997.
- 4) The case of the present applicant/original complainant in nut-shell is that he had purchased a row house at Navi Mumbai and started residing there along with his wife i.e. present respondent no.2. He had the documents to show that he had purchased the said row house from CIDCO. This happened in the year 1977. The deed of registration of the apartment is of the year 1990. The complainant resided with his wife respondent no.2 and his son till October, 1990. Thereafter, on or about 14th October, 1990 he left India and went to U.S.A. for two years. After he left India, his wife respondent no.2 and his son continued to reside in the row house. According to the complainant, he had not given any power of attorney or any right of any nature to alienate, transfer or sale or create any interest with respect to the row house in favour of any third

party or in favour of the respondent no.1 / original accused no.1. The complainant returned back to India sometime in October, 1992 and noticed that his row house was occupied by respondent no.1 and his wife was not residing there. He noticed that respondent accused no.1 was illegally residing in the row house without any authority. He filed a civil suit bearing No. 658/1993 and said suit was decreed and the decree was also confirmed in the appeal before the 4th Addl. District and Sessions Judge, Thane vide Civil Appeal No. 77/1999. As on today the possession is received back by the present applicant/complainant.

5) It is also the case of the complainant that after noticing that the possession of his row house was taken over by respondent no.1, he thought that it was the joint action by both the respondents i.e. respondent no.1 and respondent no.2, wife of the applicant/complainant, in transferring the row house in the name of respondent no.1. According to him, an amount of Rs.1,80,000/- has been taken by his wife respondent no.2 from respondent no.1. According to him, such a statement was given by respondent no.1 while his statement was recorded under section 313 of Cr.P.C. at the end of the private complaint lodged against the respondent Nos. 1 and 2.

6) What weighed with the trial Court was the lack of evidence as to under which document either registered or

unregistered the said row house was apparently given in possession of respondent no.1 by respondent no.2. The trial Court had also ascertained that according to the cross-examination of the present applicant/complainant, he did not file any documentary evidence to show that he had sent any money to his wife and son. The Trial Court also discussed the further cross-examination of the complainant wherein he had admitted that initially when he wrote a complaint letter to the police mentioning that respondent no.1 was staying in his row house, he did not make any allegation against his wife and his son. In fact, he had agreed that in a letter written to the police he had raised the issue of security and safety of his wife and son. Also what weighed with the trial Court was the lack of evidence to attract the offence punishable under section 420 of IPC mainly for the reason of no documentary evidence regarding any transaction entered into between respondent no.1 and respondent no.2 and any documentary proof that the alleged amount of Rs.1,80,000/- has been received by his wife i.e. respondent no.2, from respondent no.1.

7) Considering the substantive evidence of the complainant and considering the answers given by him in the cross-examination and considering the factual position as discussed above, in the considered view of this Court, it cannot be said that the view taken by the trial Court is of such a

perverse nature so as to be interfered with by allowing the applicant to re-agitate the matter in an appeal challenging the acquittal. In other words, within the powers vested in this Court to interfere with the order of acquittal, it cannot be said that the present matter can be viewed differently than the view taken by the trial Court.

8) In the result, there is nothing to entertain the present application for leave to file appeal and same is accordingly dismissed and disposed of.

(A.R. JOSHI, J.)

CERTIFICATE:-

Certified to be true and correct copy of the original signed order.