

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.402 OF 2013

Sou. Ankita Krishnat Farakate	..Applicant
<i>Versus</i>	
State of Maharashtra and others.	..Respondents

....
Mr. Jayant Bardeskar, for the Applicant.
Mr. A.R. Patil, APP, for the State.
Mr. Shekhar A. Ingawale, for Respondent Nos.2 to 21.
....

CORAM : A. R. JOSHI, J.

DATE : 29th JULY, 2015

P.C.

1. Heard learned Counsel for the applicant in this application for leave to file appeal challenging the acquittal of the respondents in the matter of offences punishable under Sections 452, 323, 427 read with Section 34 of IPC.
2. Said acquittal is in a private complaint lodged by the present applicant. The judgment and order of acquittal was passed by the J.M.F.C. Kagal on 31.5.2013.

3. The facts of the present matter are very peculiar in nature inasmuch there was admittedly some civil dispute over the house property between the applicant and some of the accused persons. According to the applicant the actual incident of house trespass and assaulting the applicant and her mother-in-law occurred on 11.11.2001 at about 9:30 a.m.. That time, all the respondents i.e. original accused Nos.1 to 21 came to her house with spade, sticks, iron rods, hammers in their hand and started falling the wall from eastern side of her house. The mob also assaulted the complainant. When she shouted for help, her mother-in-law and father-in-law came for her help. That time some of the respondents / accused threw chilly powder in the eyes of her mother-in-law who is CW-2. The respondents / accused persons snatched the ear-rings, marriage-string and also other ornaments from the person of her sister-in-law. The respondents / accused also ransacked the house and also broken various articles including TV and damage was caused to the extent of Rs.1,25,000/- of the house property. The complainant then lodged a complaint with the Murgud police station. However the police did not take cognizance of any cognizable offence but took action only under Section 151 of

Cr.P.C. and also against only some of the accused. Thereafter without pursuing the said complaint before the higher officials of the police she filed a private complaint on 26.11.2001. Apparently, during pendency of said complaint the applicant/complainant did not remain present before the Court and after about five years the complaint was dismissed which was too dismissed for non prosecution on 20.2.2006.

4. After above, another complaint on the same cause of action was filed by the present applicant for taking action against the respondents for the offences punishable under Sections 323, 427, 452 read with Section 34 of IPC.

5. During pendency of the complaint, original accused No.2 died. Hence charge was framed against the remaining accused. During the trial only three prosecution witnesses were examined i.e. present applicant, her mother-in-law and the doctor who apparently threatened these injured at Zilla Parishad Murgud Medical Centre. Their medical examination was conducted by said Doctor CW-3 on 11.11.2001 and apparently he found very minor injuries on CW-1 Anita, as follows :

1] Abrasion 1/4th cm. on left foot.

- 2] Neck pain
- 3] Back pain.

Whereas said Doctor found following injuries on CW-2 Laxmi :

- 1] Back pain
- 2] Pain over left thigh
- 3] Abrasion over left knee joint
- 4] Complaint of headache – No bleeding.
- 5] Giddiness.

6. It is a factual position that said Medical Officer did not produce any documentary evidence to show examination of the injured women and treatment given to them. Over and above, this Doctor has mentioned in his evidence before the Court that whatever injuries sustained by these women were told by them and accordingly he recorded them and entered in the case papers.

7. What weighed with the trial Court was apparent variance in the substance evidence of CW-1 and CW-2 and no authentic medical evidence so far as the injuries sustained by these witnesses. Moreover the injuries if at all accepted as sustained are very minor in nature. In fact, neck pain and back pain and pain over the left thigh and giddiness are also termed as the injuries by the said CW-3 doctor. By no stretch of imagination it can be said that these are the injuries of such a serious nature, in the absence of any document.

8. Apart from the above, what weighed with the trial Court was the non-examination of father-in-law who was also reportedly present during the incident and was also assaulted by the mob. Also what weighed with the trial Court was non-examination of any of the independent witnesses or even the neighbours of the complainant. As such, a reasonable doubt was entertained by the trial Court as to involvement of the accused persons and this is rightly so done by the trial Court in the considered view of this Court.

9. In view of the above factual position, there is nothing to allow the complainant now to reagitate the matter by way of an appeal before this Court. In other words, it must be said that the order of the trial Court is not of pervert nature or not in accordance with the material available on record so as to be interfered with. In the result, there is nothing in the present application for leave to file appeal and the same is accordingly dismissed and disposed of.

(A. R. JOSHI, J.)