

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION [ALP] NO.394 OF 2015
[Devyani Gandadal Shah @ Smt. Devyani Patel Vs. State of Maharashtra
& Ors.]

Office Notes, Office
Memorandum of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's Orders

Mr. Umesh V. Mohite i/b. Sameer Vaidya, for the applicant.
Mrs. P.P. Bhosale, APP, for the State.

CORAM : A. R. JOSHI, J.

DATE : 20th AUGUST, 2015

P.C. :-

1. Heard learned Counsel for the applicant on this application for leave to file appeal challenging the acquittal of the respondents in the matter of private complaint registered for the offences punishable under Sections 380, 447, 506, 464, 468A read with Section 34 of IPC is concerned.
2. Learned Counsel for the applicant / original complainant argued that there are chances of success in the appeal challenging the acquittal mainly on the ground that the substantive evidence of the complainant CW-1 is required to be accepted.
3. These arguments are required to be considered in the light of the substantive evidence of seven complainant witnesses produced before the trial Court. Prior to discussing the effect of this substantive evidence, the case of the complainant in nutshell is summarized as under.

4. The complainant claims to be a owner of flat No.C-7, Sector 10, Nerul, New Bombay and also claims to be in possession of the said flat for a particular time when according to her the main offence punishable under Section 380 of IPC was committed by the respondents i.e. original accused Nos.1 to 3. According to her, from the said flat certain documents i.e. agreement of registration, income tax papers etc. were stolen and it was so done by the respondents while respondent No.1 was allowed to stay in the said flat as by then he was an employee of the husband of the complainant. According to the complainant when she was out of Bombay and was at Aurangabad the accused persons committed theft of her ornaments, original documents and other papers from the said flat. When the complainant called upon the accused persons to vacate the said premises, the accused persons abused her in filthy language and threatened her of dire consequences and even prepared forged and fabricated documents and thus also committed an offence punishable under Sections 464 and 468A of IPC and also offence of trespass on the said flat.

5. The main substantive evidence of CW-1 complainant was marshaled by the trial Court in the light of the evidence of one Siraj Khot, who is CW-3 and who is allegedly owner of the said flat C-7. The trial Court also analyzed the substantive evidence of CW-7 one Smt. Farzana Shaikh who is original owner of the said flat. It was ascertained by the trial Court that no original documents much less copies of the registered sale-deeds for the said flat C-7 were produced by the complainant. The xerox copies were produced by her were not proved as per law. So also those xerox copies were the copies of the notarized documents and not documents registered with the Sub-Registrar of Assurances. The trial Court also held that the original owner of the said

flat i.e. CW-7 had categorically stated that she never entered into an agreement for sale of said flat with the complainant. On the contrary she stated that she agreed and entered into a contract with the accused No.1 / present respondent No.1, concerning said flat.

6. Considering this substantive evidence and mainly of CW-1 the complainant herself, it cannot be said that at any time she was in possession of said flat C-7 when the alleged incident of theft and trespass over the said property, had taken place. More over there is no evidence as to fabrication of any document concerning said flat.

7. Considering the scope of this Court in interfering with the order of acquittal, it cannot be said that the trial Court had erred in appreciating the material and also it cannot be said that the order of the trial Court is absurd and needs to be interfered in an appeal. Hence, there is nothing to entertain the present application for leave to file appeal challenging the order of acquittal under Section 378(4) of Cr.P.C.. Hence, present application for leave to file appeal is dismissed and accordingly disposed of.

(A.R. JOSHI, J.)