

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.604 OF 2015

GRAMONNATI MANDAL ...Applicant.
V/S
DIPAK RAJ SHASTRI AND ANR ...Respondents.

....

Mr. Subhash Langote i/b. J.A. Madane a/w. V.A. Madane, for the
Applicant.

Mrs. P.P. Bhosale, APP, for the State.

....

CORAM : A. R. JOSHI, J.

DATE : 1st OCTOBER, 2015

P.C.

1. Heard rival submissions on this application for condonation of delay in preferring the application for leave to file appeal challenging the acquittal of the respondent. Though in fact the application for leave to file appeal is not to be treated as an application under Section 378 of Cr.P.C.. Said application is required to be disposed of. After hearing rival submissions present application for condonation of delay is allowed in taking up the proceedings challenging the acquittal of the respondents. Present application is disposed of accordingly and the application challenging acquittal of the present respondent is

taken up forthwith for final disposal.

2. Heard learned Counsel for the applicant on this application challenging the acquittal of the respondent in the matter of offences punishable under Sections 376(2)(f), 323 and 506 (II) of IPC.

3. Earlier the matter was taken on 23.9.2015 and a detailed order was passed by this Court raising a question whether the present application for leave to file appeal purportedly under Section 378 of Cr.P.C. is an application for leave to file appeal. Considering the peculiar facts under which the present application is filed by one Society with which earlier the respondent was in the employment as a Sanskrit teacher and with which now he is asking for his reinstatement in service due to his acquittal, it was held by this Court that the society cannot be considered as an aggrieved party because of the acquittal of the respondent in the matter of offences referred above.

4. The factual position is that First Information Report was lodged by the father of the prosecutrix girl against the

respondent, mainly for the offence punishable under Section 376(2)(f) of IPC. Admittedly the trial ended in acquittal vide order dated 11.12.2014 passed by the Additional Sessions Judge, Khed-Rajgurunagar, Pune.

5. During the trial total five prosecution witnesses were examined. PW-1 the first informant (father of the girl), PW-2 mother of the victim girl and PW-3 the victim herself did not support the case of prosecution and turned hostile and as such were cross-examined by APP. But the Court disbelieved the case of the prosecution due to the substantive evidence of these important prosecution witnesses and in fact observed that the girl was treated like a daughter by the respondent and there was no allegation made in the substantive evidence as to forcible sexual intercourse. Last two prosecution witnesses are the police officers.

6. Nowhere there was any question of the present applicant-Society coming into picture either as a witness or for that matter having any interest with the prosecution of the respondent. By analyzing the case of the prosecution witnesses, the trial Court acquitted the respondent as mentioned above.

This is the acquittal challenged not by the victim girl or her parents or even for that matter not by the State, but, by the present applicant-Society on the premise that the present applicant-Society now will suffer loss if the respondent/accused is reinstated as per his service conditions due to his acquittal in the said criminal case. Though it is vehemently argued by learned Counsel for the applicant-Society that the applicant society is the victim, now apparently as per the proviso to Section 372 of Cr.P.C., such an argument cannot sustain in law inasmuch as the concept of 'victim' as defined in Section 2(wa) of the Criminal Procedure Code cannot be stretched to such an extent that an employer or ex-employer of the acquitted person can be a victim because of acquittal of the respondent in an offence of rape. Moreover the loss or any injury contemplated by the Society because of future reinstatement of the respondent cannot be considered as a loss or injury by a victim as contemplated by definition in section 2(wa) of Cr.P.C. and contemplated by proviso to Section 372 of Cr.P.C..

7. In view of the above position of law, in the considered view of this Court even the present application cannot be

maintainable, and for that matter under any provisions of Section 378 of Cr.P.C. but also not maintainable under the proviso to Section 372 of Cr.P.C., much less on the merits of the case. In the result there is no substance in the present application and the same is accordingly dismissed and disposed of.

8. The observations made by this Court in this order are restricted to the decision of the present matter.

(A. R. JOSHI, J.)

Deshmane (PS)

CERTIFICATE

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