

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.470 OF 2015

MRS.HILDA JEROME KINNY ...Applicant.
V/S
INDERMAL MULCHAND JAIN AND ORS ...Respondents.

....
Mr. V.V. Khanolkar, Advocate for the Applicant.
Mrs. P.P. Bhosale, APP, for the State.
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CORAM : A. R. JOSHI, J.

DATE : 16th OCTOBER, 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 offences punishable under Sections 504 and 506 of IPC.
2. The impugned judgment and order was passed by the M.M. Court No.10, Andheri, Mumbai on 1.8.2015 on the private complaint lodged by the present applicant/original complainant.
3. Allegedly the incident of uttering abusive language by both the respondents/original accused towards the present applicant occurred in the afternoon of 10.8.2005 and allegedly the incident was witnessed by many people including the

witnesses who were examined during the trial. It is also factual position that the private complaint was lodged on 21.3.2007. As such, the complaint is belatedly lodged with a delay of about 19 months.

4. The case of the applicant/complainant is that she had some share in the immovable property i.e. a chawl in which high handedly the present respondents started residing without any authority. On the day of the incident in the afternoon at about 3:30 p.m. she went to the said room No.3 which was under the possession of both the respondents. That time, allegedly they uttered some threatening words and also abused her in filthy language. Thereafter she along with her sister and son of her sister went to the police station to lodge complaint. But the police did not record any offence but lodged NC and directed her to take recourse of lodging of a private complaint in the Court. Thereafter it is a factual position that the complaint was lodged on 21.3.2007 after the lapse of one and half year. During the trial, five witnesses were examined including the applicant/complainant herself. Admittedly witness Nos.3 and 4 who were the neighbours, did not support the case of the complainant. The main substantive evidence before the trial

Court was that of the complainant (witness No.1), her relative i.e. son of her sister (witness No.2) and witness No.5 apparently a friend of witness No.2. The trial Court discussed the substantive evidence of these witnesses and did not place reliance of the evidence of witness Nos.2 and 5 and came to conclusion that there is no corroboration to the allegations made by the complainant (witness No.1). What weighed much with the trial Court was the delay of more than one year and seven months in lodging complaint with the Court and apparently there is no explanation given by the complainant for such delay.

5. Though during the arguments learned Counsel for the applicant/orig.complainant submitted that said delay was caused on account of taking various steps with the higher police officials, not a single document was produced before the trial Court as to any correspondence or any request letters sent to the higher police officials. There is nothing brought on record as during the meantime, between the incident and the lodging of the complaint there was any negotiation going on between the parties though it was so alleged during the arguments. The trial Court also critically examined the substantive evidence of

witness No.2 and came to the conclusion that there was some dispute between said witness and respondent No.1 and it was regarding some settlement in the immovable property situating elsewhere. Considering this, the trial Court disbelieved the testimony of witness No.2.

6. Considering the effect of substantive evidence of the witnesses examined on behalf of the complainant and mainly considering the delay without any explanation, in filing the complaint belatedly, and considering the dispute over the room in the chawl, in the opinion of this Court the reasoning given by the trial Court in not accepting the case of the complainant cannot be treated as of such a pervert nature so as to be interfered with. In other words, there is nothing to entertain the present application for leave to file appeal challenging the acquittal of the respondents. In the result, present application is dismissed and disposed of.

(A. R. JOSHI, J.)