

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.365 OF 2014

MR.DAVIS DAVID

)...APPLICANT

V/s.

SHRI MUKESH SHAH AND ORS.

)...RESPONDENTS

Shri Nitin Patil, Advocate for the Applicant.

Shri D.P.Adsule, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 19th OCTOBER 2015.

P.C. :

1 On the basis of a complaint lodged by the applicant herein, the respondent nos.1 and 2 were prosecuted on the allegation of having committed the offences punishable under Sections 323 IPC, 420 IPC, 504 IPC and 506 IPC read with Section 34 IPC. The Judicial Magistrate First Class, Thane, after holding a

trial, found the said respondents not guilty and acquitted them. The applicant is aggrieved by the said order of acquittal, and is, by the present application, seeking leave to appeal from the said judgment and order of acquittal.

2 I have heard Shri Nitin Patil, the learned counsel for the applicant. With his assistance, I have gone through the application and the annexures thereto. I have carefully gone through the impugned judgment.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondents shall be referred to as 'the accused.'

4 The learned Magistrate observed that there were variations in the version made out in the complaint and the testimony of the complainant. The Magistrate also observed that the complainant stated about an incident which had taken place in the month of May, which, according to the complainant himself,

had been reported to the police on 15th September 2001. Apart from this delay, the Magistrate also observed that even that report had not been brought on record by the complainant during the trial.

5 The Magistrate also observed that there was some business / commercial transaction between the complainant and he accused persons, and that, the complainant could not establish the *mens rea* requisite for cheating.

6 The Magistrate also observed that the account of the incident of assault and the injuries caused to the complainant, as given by the complainant, was exaggerated and there were improvements in the version of the complainant.

7 The learned counsel for the complainant is unable to satisfy me that the appreciation of evidence, as done by the Magistrate, suffers from errors. There does not seem to be any infirmity or error in the reasoning of the Magistrate.

8 It is well settled that if the view of the matter, as taken
by the Magistrate leading to the acquittal, is a possible view, this
court would not interfere with the order of acquittal. This settled
legal position needs to be taken into consideration while
considering the question of grant of leave to file an appeal against
acquittal.

9 In my opinion, no case for grant of leave is made out.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment / Order.**