

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.207 OF 2014

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SACHIN VISHWAS WAIDANDE)...RESPONDENT

Mr.Deepak Thakre, APP for the Applicant-State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 13th FEBRUARY, 2015.

P.C. :

1 The respondent was prosecuted on the allegation of having committed an offence punishable under Section 354 of the Indian Penal Code (IPC). After holding a trial, the Judicial Magistrate First Class, Islampur, convicted him of the said offence and sentenced him to suffer Rigorous Imprisonment for 2 months and to pay a fine of Rs.2,000/-. The respondent appealed to the court of Sessions. The Additional Sessions Judge, who heard the appeal, reversed the order of conviction as recorded by the

Magistrate and acquitted the respondent. The State of Maharashtra is aggrieved by the said order of acquittal. It is, therefore, by the present application, seeking leave to file an appeal therefrom.

2 I have heard Mr. Deepak Thakre, the learned APP, for the State. With his assistance, I have gone through the application and the annexures thereto, which include the judgment delivered by the learned Magistrate, the judgment delivered by the Additional Sessions Judge in appeal, and also a copy of the complete notes of evidence recorded during the trial.

3 The Magistrate had believed the testimony of the prosecutrix. The defence of the respondent was to the effect that there had been some incident between him and the husband of the prosecutrix, and that the respondent had been beaten by the husband of the prosecutrix. That, as a counter blast to the complaint made by the respondent regarding that incident, the present case came to be lodged.

4 Though this defence was not accepted by the learned Magistrate, the learned Additional Sessions Judge found substance in the same. The learned Additional Sessions Judge observed that, the basis, for the prosecutrix having gone to the shop where the alleged incident took place, was said to be that she wanted to give tobacco pouch to one Manik Waidande and another, who had come to her house at about 11.00 p.m. and had demanded a tobacco pouch. The learned Additional Sessions Judge further observed that, this itself was not established as there was nothing to show that Manik Waidande had indeed been to the shop of the prosecutrix. The learned Additional Sessions Judge, thus, doubted, whether the respondent had any occasion to go to the shop of the prosecutrix at about 11.30 p.m. and demand seven tobacco pouches.

5 The Additional Sessions Judge also observed that the evidence of PW3 Krishnat Waidande indicated that some quarrel was going on between the father of the respondent and the

husband of the prosecutrix, and that, on that date, an incident had taken place, wherein the husband of the prosecutrix and her brother-in-law had assaulted the respondent. The learned Additional Sessions Judge also observed that, it was revealed in the evidence that the father of the respondent worked for the political opponent of the husband of the prosecutrix in the election of Panchayat Samiti.

6 Considering this aspect of the matter, the Additional Sessions Judge thought that, the benefit of doubt, that arose out of the evidence adduced during trial, needed to be given to the respondent.

7 The view of the matter, as taken by the Additional Sessions Judge, does not seem to be suffering from any error or illegality. Infact, the appreciation of evidence, as done by the Magistrate, does not appear to be proper, and it appears that the judgment of conviction, as delivered by the Magistrate, was rightly reversed by the learned Additional Sessions Judge.

8 That, this court will not interfere with an order of acquittal, when the view taken by the court leading to the acquittal, is a possible view, shall be applicable even where the order of acquittal is an appellate order.

9 In my opinion, grant of leave to file an appeal, would be futile in this case.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)