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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.363 OF 2003

Abidabee w/o Gayaskha Patve,
Age: 35 years, Occ: Household,
R/o. Kazipura, Patve lane,
Shahada, Dist. Nandurbar. ..APPLICANT

VERSUS

1. Gayaskha s/o Subhankha Patve,
Age: 32 years, Occ: Labourer,
2. Iliyaskha Subankha Patve,
Age: 30 years, Occ: Labourer,
3. Subhankha Umankha Patve,
Age: 65 years, Occ: Labourer,
All are R/o Chalisgaon Car Repairs
Madik Nagar, Near Bombay bakery,
National High Way No.6, Jalgaon,
Tq. Dist. Jalgaon.
4. The State of Maharashtra. ..RESPONDENTS

Mr P.B. Patil, Advocate for applicant;
Mr G.V. Wani, Advocate for respondent Nos. 1 to 3;
Mr C.V. Dharurkar, A.P.P. for respondent No.4

CORAM : N.W. SAMBRE, J.

DATE : 26th SEPTEMBER, 2016

ORAL JUDGMENT :

PW-1 Abedabi, who is examined at

(2)

Exhibit-46, claims to be serving in National High School, Shahada since 1979 and was married to Gayaskha on 2nd December, 1987 at Shahada.

2. There was demand of money and illtreatment by the accused persons, resulting into registration of crime for an offence punishable under Sections 498-A, 506(II), 323 read with Section 34 of the Indian Penal Code.

3. PW-4 P.S.I. Abdullasha Chandsha Conducted the investigation in the matter and filed charge sheet. The charge came to be framed at Exhibit-20 as against the accused persons and since the accused persons pleaded not guilty, faced the trial.

4. Learned Judicial Magistrate, First Class, Shahada vide his judgment and order dated 2nd September, 1995 convicted all the accused for an offence punishable under Sections 498-A, 506(II), 323 read with Section 34 of the Indian Penal Code,

(3)

sentencing them to suffer simple imprisonment for three months and to pay fine of Rs.1000/- each, in default to suffer simple imprisonment for 15 days.

5. The respondents-accused, feeling aggrieved thereby, preferred the appeal before learned Additional Sessions Judge, Shahada being Criminal Appeal No. 19 of 1998. The said appeal came to be allowed vide judgment and order dated 7th August, 2003 acquitting the respondents-accused. As such, present criminal revision application by the complainant.

6. Heard Mr. Patil, learned Counsel for the applicant. While assailing the judgment of acquittal, learned Counsel would submit that the findings recorded by learned lower appellate Court of acquittal calls for interference, particularly when the incorrect observations are recorded by learned appellate Court, particularly in regard to testimony of PW-1 complainant Abedabi in regard to complaint dated 29th April, 1990. He would submit

(4)

that the alleged incident is dated 19th April, 1990 and the complaint was lodged on that very day. According to him, if the evidence of PW-4 PSI Abdullasha Chandsha, the Investigating Officer, is appreciated, he has in categorical terms stated that on 20th April, 1990 when he was on duty, he received the complaint from the complainant PW-1 at Exhibit-37 resulting into registration of crime in question. According to him, the spot panchnama at Exhibit-57 also speaks of voluminous about the fact of lodging of the complaint at Exhibit-37 immediately after the incident dated 19th April, 1990. According to him, as such ground of delay as has been taken shelter of by learned Sessions Judge in the matter of lodging first information report is incorrect finding and as such, the judgment is required to be upset.

7. Mr. Wani, learned Counsel for the respondents-accused would submit that the findings recorded by learned lower appellate Court does not call for any interference as according to him,

(5)

Exhibit-37 from the original record depicts to be an application for exemption moved by the accused persons. He would then submit that Exhibit-47 is copy of the complaint and perusal thereof reflects that same was tendered on 29th April, 1990 and as such, the Court below has rightly appreciated the same while acquitting the accused. In addition, he has invited attention of this Court to the findings recorded by learned trial Court on the said issue.

8. Having considered the submissions in analytical manner and having perused the original record, it could be observed by naked eyes that Exhibit-37 appears to be the application moved by the accused for grant of exemption from personal appearance during the trial. Exhibit-47 appears to be complaint lodged by complainant, which is dated 29th April, 1990. The alleged incident is dated 19th April, 1990. Admittedly, there is no explanation as to why there is delay of more than eight days in lodging the first information report. Perusal of evidence of PW-1 depicts that she has

(6)

waited after the incident so as to have consultation with her mother and as such, thereafter she lodged complaint.

9. If the evidence of PW-4 tried to be co-related with that of PW-1, the fact remains that Exhibit-57 spot panchnama was drawn by PW-4 on 29th April, 1990 i.e. after first information report came to be registered. So far as Exhibit-47 the complaint as is reflected in the evidence of PW-4 to be a complaint, in my opinion, the contents of complaint Exhibit-47 will prevail, as Exhibit-37 is an exemption application as is apparent from the record.

10. In view of above, the findings of acquittal recorded by learned Additional Sessions Judge does not call for any interference, particularly when the issue of delay in lodging the first information report is very much weighed before the learned Sessions Judge in granting acquittal. No case for interference in revisional

(7)

jurisdiction is made out. As such, criminal revision application fails and stands rejected.

(N.W. SAMBRE, J.)

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