

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPLICATION NO.122 OF 2015

The State of Maharashtra .. Applicant  
*Versus*  
Sitaram Subhash Babar .. Respondent

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Mr.PP. Bhosale, APP for the applicant State.

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**CORAM : ABHAY M. THIPSAY, J.**

**DATED : 1<sup>st</sup> MARCH, 2016**

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**P.C. :**

1           The respondent was prosecuted on the allegation of having committed an offence punishable under section 354 of the IPC. The Judicial Magistrate, First Class, Mangalveda after holding a trial, found him not guilty and passed an order of acquittal. The State of Maharashtra is aggrieved by the said order of acquittal, and is, by the present application, seeking leave of this Court to appeal from the said order of acquittal.

2           I have heard Mrs.PP. Bhosale, learned APP for the State in support of the application. With her assistance, I have glanced through the relevant evidence. I have gone through the impugned judgment. The prosecution case, as put forth before the trial Court was that the victim – a girl aged about 7 years – who was returning from her school on 22<sup>nd</sup> December 2011, was accosted by the respondent who outraged her modesty. The

matter had, reportedly, come to light as the uncle of the victim – one Krishna – was passing from near the canal where the alleged incident took place. He, at that time, heard the cries of a girl, and went to the canal; and peeped inside, and found the respondent doing objectionable acts towards the victim.

4 Krishna then reported the matter to the mother of the victim who lodged a report with the police, which was treated as the First Information Report.

5 During the trial, the prosecution produced one more witness – one Babu S. Shinde as the eye witness to the incident whose mention was not made in the First Information Report. Even the said Krishna had not spoken about his presence.

6 The learned Magistrate observed that though as per the prosecution case, the incident was seen and revealed to the First Informant by Krishna, the victim did not mention about Krishna having come to the scene of the offence, and having taken her to her house. In fact, the victim mentioned that some other person i.e. Satyavan – who was not examined as a witness during the trial – as the person who had taken her to her home. Apparently, the statement of the said Satyavan was not recorded even during the course of the investigation.

7 The learned Magistrate, for sound reasons, doubted whether Krishna and PW 6 – Bapu Shinde were indeed eye witnesses. The observation made by the Magistrate that, in the circumstances, Satyavan was a necessary witness and non-

examination of Satyavan, casts a doubt on the reliability of the prosecution case, appears to be correct.

8           The learned Magistrate also considered whether he could rely solely on the testimony of the victim. In considering this, he observed that there were inconsistencies in the evidence of the victim, and that the same could not be relied upon.

9           The relevant discussion finds place in paragraph nos.18, 20, 22, 24, 25 and 26 of the impugned judgment.

10          The view taken by the Magistrate was certainly a *possible view* of the matter. It is well settled that in such cases, grant of leave to Appeal, would be futile.

11          Leave refused.

12          Application is rejected.

**(ABHAY M.THIPSAY, J)**