

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.121 OF 2015

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SHRIRAM PANDURANG KAMBLE)...RESPONDENT

Shri V.B.KondeDeshmukh, APP for the Applicant – State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 15th JANUARY 2016.

P.C. :

1 The respondent was prosecuted on the allegations that he had committed an offence punishable under Section 398 of the IPC. The learned Additional Sessions Judge, Solapur, after holding a trial, found him not guilty and acquitted him. The State of Maharashtra is aggrieved by the said order, and is therefore, by the present application, seeking leave to appeal therefrom.

2 I have heard Shri V.B.KondeDeshmukh, the learned APP for the State, in support of the application. I have also gone through the application and the copy of the impugned judgment that is annexed thereto.

3 The prosecution case was that, the informant Sharif Gafur Shaikh, one Bhimrao Bhimde, and others were travelling by a jeep owned by Bhimrao (PW1). They were returning to their village Kandalgaon. When they reached near Dube Patil vasti located at about one kilometer from village Kandalgaon, they saw that one roller was standing on the road and that some stones had been placed on the road. Therefore, they stopped their jeep. Sharif Shaikh along with Dattatraya Potdar and Bhimrao Bhimde came out to remove the stones. At that time, they saw four persons - two standing by the side of the road, and the other two standing by the side of the roller. These four persons allegedly assaulted them. The respondent was one of the four persons, who, allegedly, was holding a knife like weapon in his hand at that time. The others, who were seated in the jeep, got down and

apprehended two of the said four persons including the respondent and one Yuvraj Kirte. They were taken to the police station and were arrested on the allegation of having committed an offence punishable under Section 398 of the IPC.

4 The prosecution examined four witnesses during the trial. The learned Additional Sessions Judge observed that none of the prosecution witnesses could state as to what kind of weapon had been held by the respondent during the assault. The learned Additional Sessions Judge doubted the theory of assault by observing that none of the witnesses were injured. The learned Additional Sessions Judge also noted the omission of First Informant Sharif Shaikh to state in the FIR that the respondent had assaulted him and the others by a knife. The omission in the FIR to mention that the respondent was holding a knife was also taken into consideration by the learned Additional Sessions Judge.

5 The panchas in respect of the alleged seizure of the knife from the respondent were not examined during the trial.

The learned Additional Sessions Judge observed that none of the prosecution witnesses had stated that the respondent or the other accused had demanded any money or any valuable things from the First Informant and / or the witnesses. He also observed that none of the witnesses stated about any conversation between the respondent and the others.

6 The learned Additional Sessions Judge noted that there was enmity between PW1 Bhimrao and the brother of the respondent. Bhimrao had already lodged a complaint against the brother of the respondent at Mohol Police Station. He observed that in view of the enmity, the possibility of the false implication of the respondent could not be ruled out. The learned Additional Sessions Judge observed that the respondent is a resident of village Korawali and also observed that the possibility of the respondent waiting on the spot for a vehicle for going to his village could not be ruled out.

7 The view of the matter, as taken by the learned
Additional Sessions Judge, is certainly a *possible view*.

8 It is well settled that in such a case, grant of leave
would be futile.

9 Leave refused.

10 The application is rejected.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

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