

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.362 OF 2013
(For Leave to Appeal - Private)**

Dr.Poonam Gopal Rohira & Anr. ... **Applicants**
V/s.

Maya Kanhaiyalal Rohira & Anr. ... **Respondents**

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Mrs.Mallika Ingale, Advocate for the Applicants.

Mr.B.G.Tangsali, Advocate for the Respondent No.1.

Mr.P.H.Gaikwad, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 25th JANUARY 2017.

P.C . :

1 By this application under Section 378(4) of the Code of Criminal Procedure, applicants/original complainants are seeking leave of this Court for permitting them to file an appeal challenging the Judgment and Order dated 01/09/2012 passed by the learned Judicial Magistrate First Class, Thane thereby dismissing their complaint for the offence punishable under Section 500 of the Indian Penal Code and acquitting the respondent No.1/accused of the said offence.

2 I have heard the learned Advocate appearing for applicants/original complainants at sufficient length. By taking

me through the FIR, as well as evidence of the prosecution, the learned Advocate argued that both applicants were falsely prosecuted in order to malign their image and to defame them in the eyes of their peers and public at large by prosecuting them vide Summary Criminal Case No.2706 of 2007. It is argued that cross-examination of respondent No.1/Maya in that case reflects motive on her part to falsely implicate both the applicants/complainants in the crime in order to defame them. Civil proceedings initiated by her as well as by her husband were dismissed by concerned Courts and she was in possession of only one room of the flat. In order to take possession of the entire flat, applicants were falsely implicated in the crime and prosecuted for the offences punishable under Sections 342, 324, 504 and 506 read with Section 34 of the Indian Penal Code through the State by respondent No.1/Maya. This, according to the learned Advocate appearing for applicants, is sufficient to point out the offence punishable under Section 500 of the IPC and, therefore, learned trial Court committed gross error of law in acquitting the respondent No.1 of the offence punishable under Section 500 of the IPC in the complaint lodged by applicants.

3 I have also heard the learned Advocate appearing for respondent No.1/accused as well as the learned Additional Public Prosecutor appearing for the respondent No.2/State.

4 It is seen from the record that the FIR came to be lodged by respondent No.1 Maya Rohra on 06/10/2007 alleging that on 25/08/2007 in evening hours accused persons/present applicants assaulted her and confined her in room and latched that room from outside. On the basis of this FIR lodged by respondent No.1/Maya Rohra, present applicants were prosecuted vide Summary Criminal Case No.2706 of 2007 and that prosecution launched by the prosecution resulted in acquittal of both applicants of offences punishable under Section 342, 323, 504 and 506 read with Section 34 of the IPC vide Judgment and order dated 14/10/2009 passed by the learned Judicial Magistrate First Class, Thane.

5 Thereafter a complaint for the offence punishable under Section 500 of the IPC came to be filed by present applicants in the Court of learned Judicial Magistrate First Class, Thane with an averment that in Summary Criminal Case No.2706 of 2007 for offences punishable under Sections 342, 323, 504 and 506 read with Section 34 of the IPC, they were prosecuted at the instance of respondent No.1 Maya Rohra. It is further alleged in the said complaint bearing No. SCC No.2793 of 2010 for offence punishable under Section 500 of the IPC that though no such incident as alleged in the FIR of SCC No.2706 of 2007 had happened or occurred, the prosecution was just in order to defame present applicants. After due trial ultimately this complaint

bearing No.2793 of 2010 lodged by both the applicants came to be dismissed and consequently respondent No.1 Maya Rohra i.e. accused therein came to be acquitted of the offence punishable under Section 500 of the IPC.

6 Section 3 of the Indian Evidence Act, 1872 deals with interpretation clause. Terms “proved”, “disproved” and “not proved” are described that this Section and those definitions read thus :

“Proved” – A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Disproved” – A fact is said to be proved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved” – A fact is said to be proved when it is neither proved nor disposed.

7 In the light of these definitions if the impugned Judgment and order of acquittal recorded by the learned Judicial Magistrate First Class Thane on 01/09/2012 is perused, then it becomes clear that the ultimate finding of the learned Judicial Magistrate First Class in respect of the alleged offence is “not proved” and not “disproved”. This became clear from the observations of the learned Judicial Magistrate First Class given in para 10 of the Judgment and Order sought to be impugned. The learned Judicial Magistrate First Class has categorically held that in SCC No.2706 of 2007, it is not held by the trial Court that the alleged incident did not happen.

8 Perusal of the Judgment and Order in SCC No.2706 of 2007 and particularly paragraph 9 and paragraph 14 thereof goes to show that benefit of doubt was granted to present applicants while acquitting them in SCC No.2706 of 2007.

9 In the wake of this position emerging from the record, it cannot be said that the learned Judicial Magistrate First Class, Thane erred in acquitting respondent No.1 Maya Rohra of the offence punishable under Section 500 of the IPC.

10 In this view of the matter, leave as sought is refused and the application is rejected.

(A. M. BADAR J.)