

Akbari Mustaq Khan ...Applicant
Versus

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Mr. M.G. Patil, APP for the Respondent No.6-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 22nd NOVEMBER, 2017.

P.C.:-

The Applicant herein has sought leave to challenge the judgment dated 25th April, 2017 whereby the learned Additional Sessions Judge, Thane, has acquitted the Respondents of offences punishable under Sections 395, 341, 452, 363, 506 r/w.34 of the Indian Penal Code.

2. Heard Ms Tanu Khatri, the learned counsel for the Applicant and Mr. M.G. Patil, learned APP for the Respondent No.6-State. Perused the records.

3. The Applicant herein was the first informant in Crime No.118 of 2013 registered at Kasarwadavli Police Station. The case of the Applicant in brief is that her husband had purchased a room from

the Respondent No.1 on payment of Rs.3,00,000/-. The Respondent No.1 had not transferred the room in the name of her husband-Mushtaq. It is alleged that the Respondent No.1 was demanding more money for transferring the said room in the name of Mushtaq. Hence, the complaint was lodged against her on 9th November, 2012. It is alleged that on 31st March, 2013 the Respondent No.1 entered her house alongwith 7 to 8 persons and assaulted her husband-Mushtaq Khan and further threw out the household articles. It is alleged that the Respondent No.1 and others had taken away with them cash of Rs.30,000/-, gold ornaments and other household articles from the house.

4. Upon completion of the investigation, charge sheet was filed. The case was committed to the Court of Sessions. The learned Sessions Judge after appreciating and analysing the evidence on record has concluded mainly on the ground that there is discrepancy in the first information report dated 31st March, 2013 as well as the subsequent complaint lodged before DCP, Thane. The learned Sessions Judge has also taken note of the fact that the Applicant and her husband had identified only the Respondent No.1 and the other Respondents were not identified. There was also delay in recording

the statement of Mushtaq Khan besides the alleged incident had taken place in a chawl during morning hours despite which no independent witnesses were examined. The learned Trial Judge has observed that the muddemal goods comprising household material and cash amount of Rs.9,000/- were allegedly recovered from the open space at J.K. Bakery. The learned Judge has also taken note of the fact that there is previous dispute between the parties, in respect of the same house, which was allegedly purchased by husband of the first informant.

5. The evidence adduced by the prosecution suffers from material discrepancies. The evidence on record does not disclose the essential ingredients of the offence. Hence, the learned Magistrate was justified in acquitting the respondents/accused. The findings of the learned Judge are based on the evidence on record and are neither illegal nor perverse.

6. Under the circumstances, the view taken by the learned Magistrate is probable. The order does not warrant interference. Hence, application for leave to appeal is rejected.

(ANUJA PRABHUDESSAI, J.)