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

CRIMINAL APPLICATION (APPA) NO.528 OF 2016

Smt. Mira Gulabrao Kawale/Ray,
Aged about 63 years, Occupation -
Household, resident of c/o Ramesh
Yadav, Behind Sai Shrudha Sweet
Mart, Bajeriya, Nagpur

..APPLICANT
(Original Complainant)

VERSUS

1. Babulal Trilokchand Umrethe,
aged about 77 years,
Occupation – Business,
2. Nileshwar Trilokchand Umrethe,
aged about 58 years, Occupation
Business,
3. Sunder Trilokchand Umrethe,
aged 55 years, Occupation
Business,
4. Sunder Trilokchand Umrethe,
aged about 52 years,
Occupation – Business,
5. Sau. Aruna Sunder Umrethe,
aged about 39 years,
Occupation Household,
6. Sunil Rameshwar Umrethe,
aged about 37 years,
Occupation – Business,
7. Sheela Nileshwar Umrethe,
aged 36 years,
Occupation Household,

All resident of Near Bajpai Temple,
Telipura, Santra Market Road,
Bajeria, Lodhipura, Nagpur
(Original Accused)

(2)

8. State of Maharashtra,
through its Police Station Officer,
Police Station, Ganeshpeth,
Nagpur

..RESPONDENTS

Mr A.D. Dangore, Advocate for applicant;
Mr V.P. Gangane, Addl. Public Prosecutor for respondent no.8

CORAM : N.W. SAMBRE, J.

DATE : 17th March, 2017

ORAL ORDER

Heard Mr Dangore, learned Counsel appearing on behalf of the applicant – original complainant.

2. By the present application under Section 378 (4) of the Code of Criminal Procedure, the applicant – complainant seeks leave to file appeal challenging judgment and order of acquittal rendered by learned Judicial Magistrate First Class, Nagpur, on 9th May,2016, in Summary Criminal Case No.3538 of 2011, thereby acquitting respondents – accused of offences punishable under Sections 448, 341, 323, 504 read with Section 34 of the Indian Penal Code.

3. It is the case of the prosecution that the present applicant and respondents no.1 to 4 are real brothers and sisters, whereas remaining respondents – accused are the wives of his brothers. It is claimed that the applicant was residing in ancestral property viz. a temporary shed from where she was dispossessed and her attempt to enter into the said property was resisted by the respondents – accused by using physical force, which had resulted into registration of the crime in question.

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4. After necessary investigation, charge-sheet was filed against the respondents – accused. The charge for aforesaid offences came to be framed against the accused, to which they pleaded not guilty and claimed to be tried.

5. In order to unfold its narration, the prosecution examined P.W.2 applicant – complainant at Exh.51, P.W.3 Sadashiv, P.W.4 Investigating Officer - A.P.I. Sanjay Mendhe, P.W.5 Dimple Kothari, daughter of the complainant and panch P.W.1 Sanjay.

6. While questioning order of acquittal, Mr Dangore would invite my attention to the testimony of P.W.2 complainant at Exh.51. According to him, the testimony of complainant Mira is sufficient enough so as to prove the prosecution case and reposed confidence on the same. Just because there is no independent corroboration, her testimony cannot be jettisoned. In addition, he would invite my attention to the testimony of P.W.5 Dimple, daughter of the complainant. According to him, the said witness was residing with the complainant and as such there is independent corroboration to the incident in question.

7. Learned Addl. Public Prosecutor supports the case of the prosecution.

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8. It is required to be noted that there exists a civil dispute between the parties in relation to the ancestral property as, a suit for partition and separate possession was instituted subsequent to the alleged incident and is pending on the file of the competent Civil Court.

9. It is then to be noted that the complainant Mira had alleged that when she was dispossessed, upon inquiry from her real unmarried sister Bhuvati she came to know that respondents – accused had dispossessed her from the property in question. It is informed that Bhuvati was not examined as she had expired. It is then to be noted that in her evidence complainant Mira had not stated in categorical terms about the presence of her daughter Dimple when she was residing in the dwelling house. It is required to be observed that the testimony of Dimple is not in tune with what has been stated by complainant Mira in her evidence. Complainant Mira, at no point of time refers to the presence of Dimple in the dwelling house and in view thereof, the testimony of Dimple, being hear-say, is required to be jettisoned.

10. Apart from above, it is claimed that upon the instructions of the Commissioner of Police, the crime came to be registered, however, the delay caused in lodging first information report is not at all explained in the testimony of the said witness, but for a claim that she had approached the Commissioner of Police with her grievance.

(5)

11. So far as evidence of other witnesses is concerned, I hardly see any material to infer involvement of the respondents – accused in the crime in question.

12. In view thereof, in my opinion, no case for interference is made out. The impugned judgment and order of acquittal is justified. Leave refused. Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

amj