

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 262 OF 2018
IN
STAMP NUMBER MAIN NO. 2481 OF 2018

LIDA JOAO., ... Applicant

Versus

KANCHAN CHODANKAR AND 2 ORS., ... Respondents

Adv. A.D Bhobe for the Applicant.
Adv. J. J. Mulgaonkar for the Respondent no.1 and 2.
Mr. Pravin N. Faldessai, Addl. Public Prosecutor for
Respondent no.3.

Coram:- C. V. BHADANG, J.

Date:- 15th October 2018

P.C.:

This is an application for Leave to Appeal against acquittal.

2. The applicant is the original complainant. The alleged incident had occurred on 9/7/2002 at about 9.20 a.m at the Outpost of Assolna P.S. where the applicant was allegedly slapped by the respondent no.1(accused no.1). The respondent nos.1 and 2 are police officers attached to the out post P.S. Assolna. On investigation both the respondents/accused were prosecuted for the offence punishable under sections 323, 354 and 503 of IPC r/w section 34 of IPC. in Criminal Case No.213/P/2002/A before the learned Chief Judicial Magistrate at

Margao. The learned Chief Judicial Magistrate by judgment and order dated 19/3/2018 has acquitted both the accused from the offence punishable under section 354 r/w 34 of IPC.

3. The learned Chief Judicial Magistrate found both the respondents guilty under section 323 of I.P.C and they were released on admonition by giving the benefit of section 3 of the Probation of the Offenders Act.

4. The applicant feeling aggrieved by the acquittal of the respondents, from the offence punishable under section 354 IPC has filed this application.

5. On hearing the learned counsel for the applicant, the learned counsel for the respondents no.1 and 2 and the learned Addl. Public Prosecutor it appears that the learned Chief Judicial Magistrate on the basis of the evidence of an independent witness, namely Mr. Samiro Vaz Pereira, (PW2) has come to the conclusion that the respondent no.1 had slapped the applicant. The learned magistrate has considered the charge in so far as the offence under section 354 IPC is concerned in para 20 of the impugned judgment and has come to the conclusion that by virtue of the mere slapping of the applicant it cannot be gathered that there was "deliberate attempt on the part of the respondents in outraging her modesty". Prima facie it appears that under

section 354 of IPC, that there could be either intention or knowledge to outrage the modesty of a woman, which is the gist of the offence under section 354 of I.P.C. The learned Chief Judicial Magistrate prima facie does not appear to have considered whether the act was done with the knowledge of outraging the modesty of the applicant.

6. Considering the overall circumstances, I find that an arguable case arises for grant of leave is made out. In the result the criminal application is allowed as prayed.

7. Let the criminal appeal be registered.

8. The learned Magistrate to take action under section 390 of Cr.P.C.

C. V. BHADANG, J.

ap/-