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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.249 OF 2015

Ramsevak Budhai Chaurasia,
Residing at 110-B, Tribute Apartments,
Rajkamal Studio Compound,
Rajkamal Lane, Parel, Mumbai 400 012

..Applicant.

V/s.

1. State of Maharashtra
2. Dr.Paras Punamiya,
3. Shyam Ramchandra Pawar,
4. Mahendra Satiya

Nos.2 to 4 residing at Tribute
apartments, Rajkamal Studio,
Compound, Rajkamal Lane,
Parel, Mumbai 400 012.

..Respondents.

Mr.Sathyanarayan for the applicant.

Mr.Y.Y.Dabke, APP for the respondent-State.

Mr.PR.Kadam for respondent Nos.2, 3 & 6.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 9, 2018

PC.:-

Heard respective parties.

2. The present applicant is the complainant in complaint C.C. No.221/SW/2005 which was initiated before the Court of Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai. It is the case of the applicant that the accused persons on March 16, 2003 prevented the complainant from entering and parking his vehicle inside the society premises. It is also claimed that the respondents-accused also restrained the daughter of the complainant from entering the premises of the society.

3. As the complaint alleged commission of offence punishable under section 341 read with 34 of the Indian Penal Code, the respondents-accused were proceeded against.

4. The learned Magistrate vide his order dated February 29, 2012 acquitted the accused under section 248(1) of Code of Criminal Procedure for the offence punishable under section 341 read with 34 of the Indian Penal Code which was confirmed in Criminal Appeal No.82/2013 decided by the Additional Sessions

Judge, Greater Mumbai on February 9, 2015. As such, this revision.

5. Mr.Sathyanarayan, learned counsel for the applicant has strenuously urged that dispute under section 91 of the Co-operative Societies Act filed by the applicant in the competent Court as regards restriction on parking and entry in the premises of the society is pending. Since the act on the part of the respondents amounts to an offence under Indian Penal Code, the respondents were proceeded against. In support of claim made in the criminal complaint, Daughter and Son of the complainant were examined, whose evidence is not properly appreciated by both the Courts below. In addition, the learned counsel would urge that after re-appreciating the evidence, if this Court is not inclined to order conviction, it may send back the matter for fresh inquiry and trial. So as to substantiate the contentions, he would draw support from the judgment of the Apex Court in the matter of *Ayodhya Dube and others V/s. Ram Sumeer Singh*¹. He submits that the Court should remand back the matter for its trial. The learned counsel would then urge that it is a case of gross miscarriage of

1 A.I.R. 1981 Supreme Court 1415

justice as the evidence of the witnesses were not properly appreciated. He would try to draw support from the judgment of the Apex Court in the matter of *Ram Briksh Singh and others V/s. Ambika Yadav and another*². He would then urge that in case acquittal is based on misreading and perverse appreciation of evidence, it is always open for this Court to direct retrial. Support is drawn from the judgment of the Apex Court in the matter of *Ganesha V/s. Sharanappa & Anr.*³. He would then submit that since all the accused persons were having common intention, section 34 of the Indian Penal Code was invoked which both the Courts below have failed to appreciate. He submits that under section 34 of the Indian Penal Code if a criminal act is done in furtherance of common intention by several persons, conviction is imminent in this case based on the available evidence on record. He would draw support from the judgment of the Apex Court in the matter of *Sewa Ram & Anr. V/s. State of U.P.*⁴.

7. The learned APP supports the claim of the complainant and submits that this Court may pass appropriate orders in the

² A.I.R. 2004 Supreme Court 4583

³ 2014 All MR (Cri) 392 (SC)

⁴ A.I.R. 2008 Supreme Court 682

facts and circumstances of the case.

8. With the assistance of the learned counsel, I have perused and appreciated the evidence placed on record. It is required to be noted that the complainant has not examined himself but has permitted his daughter and son to enter into the witness box and depose in support of his allegation before the Magistrate.

9. The learned Magistrate appreciated the evidence of all the witnesses which are produced by the present applicant. The witnesses have stated that they are owners of the flat and they parked their vehicle in open space of the society. It is also brought on record that the issue of allotment of parking space to complainant is subject matter of dispute pending before the Co-operative Court. In the said dispute, prayer for interim injunction moved by complainant was rejected upto the High Court.

10. Witnesses PW.1 Rajkamal and PW2 Shashikala have tried to substantiate the claim put forth by the complainant. It is stated that security personal obstructed them from parking their vehicle. It is to be noted that there is no evidence to infer which of

the society members amongst accused have instructed watchman not to permit the applicant to enter the society premises along with the vehicle. It is not the case of the applicant that the accused persons have personally stopped them from entering the premises of the society.

11. Apart from this, the fact remains that the Appellate Court reappreciated the entire gamut of the matter and dismissed the appeal. The Appellate Court while relying upon the Apex Court judgment in the matter of *Chinnam Kameswara Rao V/s. State of A.P.*⁵ and *Krishna Mochi V/s. State of Bihar*⁶ had made observations that the ingredients for an offence punishable under section 341 of the Indian Penal Code were not satisfied. Except evidence of son and daughter of the complainant, no independent witnesses are examined to support the claim.

12. Even the requirement of ingredients of section 34 of the Indian Penal Code of common intention of the accused persons is not established. The evidence of both the witnesses is based on hearsay material.

⁵ CRI. L.J. 1540 (SC)

⁶ (2002) 6 SCC 81

13. In the aforesaid background, this Court hardly noticed any manifest error of law or procedure committed by both the Courts below. The case in hand cannot be termed as an exceptional and suffering from glaring illegalities resulting in miscarriage of justice. As such, reliance placed on the judgments of the Apex Court in the matter of *Ayodhya Dube, Ram Briksh Singh, Ganesh and Sewa Ram (supra)* are hardly of any assistance for making out a case of common criminal intention. Reliance placed on the judgment of the Apex Court in the matter of *Sewa Ram (supra)* has no application to the facts and evidence of this case. No case for interference is made out. The revision is dismissed.

(NITIN W.SAMBRE, J.)