

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.246 OF 2018

Vaishali Vishwas Prabhudesai ... **Applicant**

V/s.

Ranjan Padmakar Deshpande & ors. ... **Respondents**

Mr.S.V. Palsuledesai for the applicant.

Ms.Anamika Malhotra, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 2nd AUGUST 2018.

P.C. :

1. This is an application filed by the original complainant seeking leave of this Court to challenge judgment and order dated 22nd March 2018 passed by the learned JMFC, Rajapur in Regular Criminal Case No.26 of 2009 thereby acquitting the respondents / original accused of the offence punishable under Section 427 of the Indian Penal Code.

2. Facts leading to the institution of the present application are thus;

- (i) A private criminal complaint came to be filed by the applicant against respondents no.1 to 3 alleging commission of offence punishable under Sections 427, 447, 379 read with Section 34 of the Indian Penal Code with an averment that the applicant / original complainant was the tenant of House No.195 situated in the Rajapur. Rent of that house was used to be paid regularly to the landlord/owner. Respondent no.1 / accused was one of the owner of the house. It is further averred that after demise of parents of complainant, she became the tenant of that house. The said house was sold by the landlord on 18th February, 2008 but possession of that house continued with the applicant/original complainant. On 14th December, 2008, the applicant /original complainant received information about demolition of that house by respondents no.1 to 3 / original accused. She immediately went to Rajapur, noticed the fact of the demolition of the house.

(ii) After recording evidence before the charge, the learned Trial Court was pleased to frame the charge for the offence punishable under Section 427 read with Section 34 of the Indian Penal Code against respondents / original accused 1 to 3. They pleaded not guilty and claimed to be tried.

(iii) After recording evidence of the parties and after hearing the parties, by impugned judgment and order dated 22nd March, 2018, the learned Trial Court was pleased to acquit respondents no.1 to 3 of the offences punishable under Section 427 read with Section 34 of the Indian Penal Code.

3. Heard, the learned Advocate appearing for the applicant/original complainant. He drew my attention to the copies of deposition witnesses examined by the complainant so also to the documentary evidence and argued that the offence alleged was proved, but the learned Trial Court was erred in acquitting the accused persons. My attention is also drawn to the

notice under Section 160 of the Code of the Criminal Procedure dated 28th January, 2009 sent to the applicant by the Assistant Police Inspector of Rajapur Police Station stating therein that the subject house was sold and no household articles were stolen there from.

4. I have considered the submission so advanced and considered the record made available. Evidence of the applicant makes it clear that her parents were tenant of House No.195 located at Bhat Ali in Rajapur. The applicant after her marriage in the year 1979 left her parental house for staying in her matrimonial house at Pune. By 1991, it is seen from evidence of the applicant that her parents passed away. Evidence of the applicant makes it clear that nobody was residing in the subject house at the time of the alleged incident. She has stated in her evidence, it was on 13th December, 2008, Govind Katkar had informed her that House No.195 is being demolished. The applicant further deposed that she therefore went to Rajapur and lodged report with the police station. But the police had not taken cognizance of her complaint. As per her version, her house is

demolished and household articles were sold there from.

5. Even if evidence of the applicant / original complainant is accepted as it is, then also it is not seen from evidence that respondents / accused nos.1 to 3 who had demolished subject house and caused mischief resulting in loss or damage of amount exceeding Rs.50/- to the applicant. There is no evidence to demonstrate that the respondents / accused nos.1 to 3 intentionally cause wrongful loss or damage by destruction of property belonging to the applicant.

6. In this view of the matter, no fault can be found with the impugned judgment and order of acquittal. Hence, no case for grant of leave to appeal is made out. Application is therefore rejected.

Vina
Arvind
Khadpe

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(A.M.BADAR J.)