

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 294 OF 1996**

The State of Maharashtra

.. Appellant

Vs.

1. Vijay Waman Patil]

2. Waman Jeevan Patil]

3. Mrs. Pramila Waman Patil]

All.R/o. Uma, Flat No.3,]

Kashinath Dhuri Road,]

Dadar, Mumbai No. 28]

to 3)

.. Respondents

(Original Accused Nos.1

Mr.P.H. Gaikwad, APP for appellant-State.

Mr.B.G. Tangsali, Advocate for respondents.

**CORAM : N. J. JAMADAR, J.
RESERVED ON : 28TH FEBRUARY, 2019
PRONOUNCED ON : 14TH MARCH 2019**

JUDGMENT :

1. This appeal is directed against a judgment and order dated 22nd December 1995, passed by the learned Additional Chief Metropolitan Magistrate (ACMM), 5th Court, Dadar, Mumbai in CC No.151/P/1985 whereby the learned ACMM acquitted the accused-respondents of the offences punishable under Sections 452, 454, 457, 427, 341 and 380 read with Section 114 of the Indian Penal Code, 1860.

2. The background facts, in a nutshell, are as under :-

Waman Patil, the Accused No.2, was a tenant of two rooms in the Chawl known as 'Uma Bhavan' owned by the father of Suresh Kawali (PW-

2). The said chawl was demolished and a new building came to be constructed thereon. Certain disputes arose between the landlord and the tenants leading to the proceedings before the Court of Small Causes, Mumbai. It is the case of the prosecution that the accused were allotted a part of Flat No.4 in the reconstructed building. Whereas Flat No.6 was allotted by the landlord to one Smt. Mrunalini Naik (the first informant).

3. The gravamen of indictment against the accused was that in between 19th April 1984 to 29th April 1984, the accused committed housebreaking by night by breaking open the lock of Flat No.6, committed theft of the articles of the first informant, namely, photo-frames, iron table and cot, and on 29th April 1984, when the first informant attempted to enter the said room, the accused wrongfully restrained her. The first informant, thus, approached Dadar Police Station and lodged report against the accused on 29th April 1984 at about 9:00 pm. The Investigating Officer, Balasaheb Jadhav (PW-5) visited the scene of occurrence and drew Panchanama (PW-11). The accused came to be arrested. The statements of witnesses were recorded. After finding the complicity of the accused, the charge-sheet came to be lodged against the accused for the aforesaid offences.

4. During the course of trial, the learned ACMM, recorded evidence of in all five witnesses including Suresh Narayan Kawali (PW-2), the son of

the landlord and Balasaheb Jadhav (PW-5), the I.O.. The accused did not lead any evidence in their defence which consisted of denial and false implication. After appraisal of the evidence and material on record, the learned ACMM was persuaded to acquit the accused. Being aggrieved, the State has preferred this appeal.

5. I have heard Shri P.S.Gaikwad, the learned APP for the appellant and Shri B.G. Tangsali, the learned counsel for the respondents-accused. The learned APP urged that the learned ACMM committed an error in returning the finding of not guilty. It was urged that there was adequate evidence and convincing material to record a finding that the accused Nos.1 to 3 had barged into the flat No.6, then in possession of the first informant, committed theft of her articles, and also wrongfully restrained her from entering into the said premises. Reliance was sought to be placed on the testimony of Sunil Kawali (PW-2), the son of the landlord.

6. In opposition to this, the learned counsel for the respondents submitted that there is not an iota of evidence to establish the guilt of the accused. In fact, according to the learned counsel for the respondents, the very factum of the first informant's possession over the Flat No.6 has not been established and, therefore, the allegation of the house trespass does not hold any ground.

7. It is pertinent to note that the first informant could not be examined as she died on 6th June 1991. Nor the landlord could be examined. The prosecution banked upon the evidence of Shri Suresh Kawali (PW-2) and the document brought on record during the course of his evidence.

8. In this context, firstly the learned ACMM found that there was a finding of the Court of Small Causes to the effect that Smt. Mrunalini Naik was not in possession of the premises. Secondly, the learned ACMM also found that the consent terms (Exh.P-3), which were placed on record to show that the Accused no.2 was given only a part of Flat No.4, were unworthy of reliance as there was over-writing and interpolation therein and the same was not proved by leading cogent evidence. Thirdly, the learned ACMM was not prepared to place reliance upon the testimony of Suresh Kawali (PW-2), as from his own assertions, it became evident that his statement was not recorded on 29th April 1984, though he was very much present with the first informant when she lodged the report.

9. The aforesaid approach of the learned ACMM appears to be justifiable. The learned ACMM has extracted the observations of the learned Judge of the Court of Small Causes, in the order on an application between the parties before the said Court, in paragraph 8, which reads as under :-

“8 *It is also observed by the Ld. Judge of Small Causes*

Court that :

“According to defendant No.1 Mrunalini Naik is put in possession, I fail to understand as to why the affidavit of said Mrunalini G. Naik has not been filed before the Court. Not only this, but any counter-foil of rent receipt or any other document showing possession of Mrunalini Naik is not produced on record. The defendant No.1 is saying on oath that Mrunalini G. Naik is in possession, the plaintiff is also saying on oath that premises are locked. When the best evidence was available to defendant No.1 to be produced before the court and it is not produced, an adverse inference is to be drawn that Mrunalini Naik is not put in possession.

Before parting with the order, I may observe that if Mrunalini G. Naik is found in possession, the plaintiff is at liberty to add said Mrunalini G. Naik as a party and pray injunction against her also.”

10. The learned ACMM was of the view that the aforesaid observations make it abundantly clear that the first informant was not *prima-facie* found to be in possession of the premises in question. The learned ACMM was also of the view that those observations in a civil proceedings bind the Criminal Court. Without delving into the binding efficacy of the judgment of the Civil Court upon the Criminal Court, in the facts of the case, it becomes explicitly clear that in the face of aforesaid observations of the learned Judge, Court of Small Causes, no material was placed on record to establish the factum of possession of Smt. Mrunalini Naik. It is pertinent to note that the learned Judge, Court of Small Causes, had expressly negatived the claim of the landlord that the first informant Smt. Mrunalini

Naik was in possession of the premises in question for the reason that the landlord had neither tendered any document in the nature of counter-foil of rent receipt to substantiate the claim of inducing Smt. Mrunalini Naik into the premises in question nor the affidavit of the said Mrunalini Naik was filed in support of the said claim.

11. Before the learned ACMM, the prosecution sought to prove the factum of possession of the first informant by tendering a photostate copy of a certificate (Exh.P-5) which proclaimed that the first informant was inducted into Flat No.6. The learned ACMM rightly discarded the said document for the reason that its original was not tendered and that the identity of its author could not be ascertained as it was unsigned. The learned ACMM, thus, concluded that such type of certificate could be easily prepared by the landlord in favour of the person who was never in possession.

12. The aforesaid inferences drawn by the learned ACMM are borne out by the record. The two documents, i.e., the consent terms (Exh.P3), whereby only a part of Flat No.4 was shown to be allotted to the Accused No.2, and the certificate (Exh.P-5), whereby the first informant was shown to be inducted into Flat No.6, by their own intrinsic evidence, were found unworthy of placing implicit reliance. Moreover, in the face of unequivocal observations of the learned Judge, Court of Small Causes, and no shred of

evidence to the contrary, the learned ACMM was totally justified in disbelieving the bald testimony of Satish Kawali (PW-2).

13. The testimony of Satish Kawali (PW-2), the prime witness of the prosecution, suffers from infirmities. It is pertinent to note that Satish Kawali (PW-2) claimed to have accompanied the first informant to Dadar Police Station for lodging the FIR on 29th April 1984 at about 9.00 PM. Surprisingly, the statement of Satish Kawali (PW-2) came to be recorded on 4th May 1984, despite his assertion that he was at the Police Station all the while when the report of the first informant came to be recorded. The delay assumes significance in the backdrop of the fact that Satish Kawali (PW-2) claimed to have first noticed the change in the lock of Flat No.6. He further claimed to have informed the first informant about the same, and witnessed the wrongful restraint caused to the first informant by the accused. In this setting of the matter, the delay in recording the statement of Satish Kawali (PW-2), which was not at all explained by the IO Balasaheb Jadhav (PW-5) erodes the credibility of the version of Satish Kawali (PW-2).

14. The learned ACMM further found that there was a serious doubt about the existence of a standalone Flat No.6, without a WC Unit, apart from Flat No.4. This doubt was entertained because of the fact that the approved plan of the building in question was not placed on record despite

ample opportunities. The learned ACMM further found that the rest of the flats, i.e., Flat Nos.3 and 5 were having self contained units and there could not have been a singleton Flat No.6, apart from Flat No.4. This inference drawn by the learned ACMM appears to be supported by the situation at the scene of occurrence as elicited from the testimony of the prosecution witnesses.

15. To add to this, nothing could be recovered from the accused either by way of direct seizure or in pursuance of the disclosure statement in the context of charge of theft. Thus, there is no circumstantial evidence which tends to connect the accused with the crime. The oral evidence of Satish Kawali (PW-2), carries with it the taint of interestedness, in the context of inimical relations on account civil dispute, and is otherwise unworthy of credence. Resultantly, I am persuaded to agree with the view of the learned ACMM that the prosecution miserably failed to prove that the first informant was in possession of Flat No.6 and accused committed house trespass by breaking open the lock and in the process committed the offences of theft, mischief and wrongfully restrained the first informant.

16. It is trite law that the Appellate Court is not expected to interfere with an order of acquittal unless there are substantial or compelling reasons. The Appellate Court has to take into account the fact that the acquittal reinforces the presumption of innocence. Likewise, due weightage

to the benefit which the trial Court had of observing the witnesses, including their demeanor, is required to be given. Viewed from this angle, in the instant case, there appears no reason, much less, substantial or compelling one, to interfere with the order of acquittal. Hence, the appeal deserves to be dismissed.

17. The appeal stands dismissed.

The bail bonds furnished by the accused stand cancelled.

Sureties stand discharged.

The record and proceedings be sent back to the Court of the learned ACMM forthwith.

(N.J. JAMADAR, J.)