

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 63 OF 2018
(FOR LEAVE TO APPEAL)**

The State of Maharashtra

.....Applicant

V/s.

Hemant Devidas Gharat

.....Respondent

Mr. A. R. Kapadnis for the applicant

Mr. Jaiprakash Sawant for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : NOVEMBER 6, 2019.

P.C.

Heard.

2 This is an application for grant of leave on behalf of prosecution questioning the Judgment and Order of acquittal delivered by Judicial Magistrate First Class, Uran on 23/06/2016 in R.C.C. No. 40 of 2015. The facts which lead to registration of crime and prosecution of respondent-accused could be summarised as

under:

(i) Complainant alleged that present respondent-accused sometime in 2011 and thereafter on 02/05/2014, 04/07/2014 and on certain unknown dates has committed an act which is punishable under Sections 354(A)(D), 509, 294, 504 of the Indian Penal Code resulting into registration of crime no. 34 of 2014.

(ii) After investigation, charge-sheet came to be submitted thereby framing charge as regards seeking of sexual favour from 2011 to 07/08/2014 by respondent-accused, stalking for the aforesaid period, an offence punishable under Section 294 of the Indian Penal Code i.e. doing obscene act, utter words at public place for the aforesaid period, an offence under Section 509 i.e. words, gesture or act intended to insult the modesty of a woman and Section 504 i.e. intentional insult to provoke breach of peace, for the aforesaid period.

(iii) In support of the prosecution case, prosecution has examined

Anil, Panch witness at Exhibit 12, complainant at Exhibit 15, one Datta at Exhibit 18, Deepak & Prateek, sons of complainant at Exhibit nos. 20 & 21 respectively and Investigating Officer at Exhibit 26. In addition to above, Panchanama at Exhibit 14, complaint Exhibit 16 and the report of Conciliation Officer at Exhibit 27 were also proved.

3 In the aforesaid background, submission of the learned counsel for the applicant/complainant is, the evidence on record if re-appreciated but for few omissions and contradictions, this Court needs to show indulgence by allowing the appeal, by ordering conviction of the accused.

4 As far as incident of 2011 i.e. visit to hospital by travelling in same bus, calling a two-wheeler etc is concerned, Investigating Officer has not drawn any spot Panchanama so also has not recovered any report of city scan so as to justify the case of prosecution about visit of victim to hospital. The victim has not narrated about the alleged call made by respondent-accused to his

friend thereby summoning two-wheeler wherein she was made to ride upto hospital and then to lodge. As such, considering material omissions, findings recorded by the court below of not proving the said offence as was claimed to have occurred in the year 2011 are just and proper are based on possible view in the facts of the case.

5 So far as incident of 02/05/2014 is concerned, P.W. 3 though has supported the case of prosecution to the incident of quarrel between the accused and complainant, however, he was unable to demonstrate the spot, the place of such quarrel. He was also unable to support the case of prosecution. As a consequence, he was subjected cross-examination.

6 The spot Panchanama at Exhibit 14 does not support the case of prosecution as in the said Panchanama it has been specifically provided that steps on which victim was sitting are located at Southern side whereas the road on which accused claimed to have riding two-wheeler is located at Northern side i.e. exactly opposite side. In view of above, story of the prosecution that accused had

abused or by uttering sexual offending words had committed an offence at public place was also not proved.

7 As far as other incidents are concerned, there is no material evidence on record to infer the alleged offence against accused person particularly when at the relevant time, victim has not lodged any complaint with the police station as could be inferred from the oral evidence of the victim.

8 That being so, no case for grant of leave is made out. Leave is refused.

[NITIN W. SAMBRE, J.]