

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

CRIMINAL APPLICATION NO. 667 OF 2018

Mr.Javed Khatun Amir Khan ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

**WITH
CRIMINAL APPLICATION NO. 843 OF 2018**

Ms.Cynthia Fernandes ...Applicant

Versus

Mrs.Rukia Khatun Amir Khan & Ors. ...Respondents

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Mr.K.B.Rajput for the Applicant in APL No. 667 of 2018 and for Respondent Nos. 1 to 5 in APL No. 843 of 2018.

Mr.J.M.Shetty i/b. Mr.Birendra Kumar for the Applicant i.e., original complainant, in APL No. 843 of 2018 and for Respondent No.2 in APL No. 667 of 2018

Mrs.G.P.Mulekar, APP for the Respondent -State.

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**CORAM : S.S. SHINDE, J.
DATE : 16th SEPTEMBER 2019**

P.C.:

1. Heard learned Counsel appearing for respective parties.
2. Learned Counsel appearing for the original complainant invites

attention of this Court to the averments made in the complaint and also accompaniments of the said complaint, and submits that the learned Magistrate after applying his mind and verification, issued the process. However, learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai without application of mind and in excess of jurisdiction vested in him entered upon the merits and quashed and set aside the order passed by the learned Magistrate. Hence, he prays that Criminal Application No. 843 of 2018 may be allowed.

3. Learned Counsel appearing for the applicant in Criminal Application No. 667 of 2018 submits that, even an offence under section 447 of the Indian Penal Code is not made out against the applicant - Mr.Javed Khatun Amir Khan. He further submits that the allegations made in the complaint are of civil nature, and civil dispute is pending before the Civil Court. He further submits that the applicant is residing in the said property since 1959 and, therefore, the question of commission of an alleged offence under section 447 of the Indian Penal Code would not arise. He invites attention of this Court to the averments and grounds taken in the application, and submits that, application may be allowed.

4. Heard learned Counsel appearing for the parties. I have perused the averments and grounds taken in the application so also annexures. I have also perused the reasons assigned by the Sessions Court, Mumbai in the impugned order. The Sessions Court, Mumbai in the impugned order has given cogent and sufficient reasons for allowing the revision filed by the accused. The observations made in paragraph No. 8 of the order passed by the Sessions Court, Mumbai appears to be after perusal of the averments made in the complaint.

5. In order to find out whether the reasons mentioned in paragraph 8 of the impugned judgment of the Sessions Court are in consonance with material placed on record or otherwise, I have carefully perused the averments in the complaint and found that, even if the allegations are read in its entirety an alleged offence is not disclosed against the accused except accused Javed Khatun Amir Khan under section 447 of the Indian Penal Code. The Sessions Court in paragraph Nos. 9 and 10 of the impugned judgment has discussed how the alleged offence under section 447 of the Indian Penal Code is disclosed against said accused.

6. This Court is in agreement with said reasons which are keeping in view the averments made in the complaint. In that view of the matter and since the learned Sessions Judge has meticulously considered the averments made in the complaint so also accompaniments and reached to the just and correct conclusion, no case is made out to cause interference in the impugned order. Hence, both the Criminal Applications stand rejected.

(S.S. SHINDE, J.)