

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

CRIMINAL WRIT PETITION NO. 1908 OF 2018

Suhas Arun Malve ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

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Mr. S. Rajepandhare, Advocate for the Petitioner.

Mr. Santaram A. Tarale, Advocate for Respondent No.2.

Mr. Arfan, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 12th JULY, 2022.

PER COURT:

1. The petitioner was prosecuted as accused No.6 in R.C.C. No.123 of 2012 arising out of C.R. No.84 of 2011 for offences punishable under Sections 498-A, 323, 504, 506 r/w Section 34 of Indian Penal Code (for short “IPC”).

2. Vide judgment and order dated 10th March, 2016, the petitioner and all the other accused were acquitted. While acquitting the accused it was observed that, on perusal of the evidence on record and discussion, the Court has come to the conclusion that the prosecution has failed to prove alleged offences against the accused beyond reasonable doubt. The evidence on record created doubt about the case of the prosecution and

therefore, it will be appropriate that the benefit of doubt has to be given to the accused. All the accused were acquitted for the offences for which they were charged.

3. The petitioner preferred an appeal before the Court of sessions only challenging the observation of the trial Court to the extent of acquitting the accused by giving benefit of doubt. The contention of the petitioner was that, it should have been the clean acquittal in the light of evidence adduced by the prosecution. The appeal was dismissed by judgment and order dated 27th February, 2018 on the ground that the appeal was not maintainable.

4. Learned Advocate for the petitioner submits that the petitioner was falsely implicated in this case. There is no evidence against the petitioner. The observations and the judgment of the trial Court clearly mentions that there is no evidence against the petitioner. Thus, it is not merely the benefit of doubt but it is the case of complete lack of evidence. It is submitted that the petitioner is the advocate by profession. During the period of trial, he was selected and recommended by MPSC for the post of Civil Judge Junior Division (CJJD) and Judicial Magistrate First Class (JMFC) in the competitive examination held in the year – 2014. However, on account of the observations in the nature of benefit of

doubt the petitioner was not given posting by competent authority. The observation that the petitioner is acquitted on account of benefit of doubt may be deleted and it may be clarified that the petitioner has been acquitted due to lack of evidence. It is submitted that, in the event the remarks are not clarified, loss would be caused to the petitioner and he will be deprived of his proposed appointment in judicial services. It is submitted that the complainant has admitted in cross examination that the case has been falsely filed due to instigation by her father. It is further admitted by the complainant that, at the time of lodging FIR father of original complainant was informed by Police that accused No.6 is not relative and therefore there will be no complaint against the petitioner. The complainant also admitted that accused Nos.6 and 7 are not relatives. The prosecution examined all eight witnesses and not a single witness is declared hostile. The trial Court has held that all witnesses are hearsay and witnesses admitted that the incident did not occur in their presence. Learned Advocate pointed out the evidence of witnesses recorded by the trial Court and the observations of the trial Court while acquitting him for the said offences. There is no challenge to the judgment of acquittal by prosecution or the complainant. It is submitted that, in Paragraph – 21 of the judgment the trial court has observed that the

admissions of complainant goes to the root of the case of the prosecution and created doubt, whether actually accused Nos.1 & 5 were harassing the complainant by demanding money for their business or work. The complainant had a knowledge about the economical condition of accused No.2 when she performed the marriage and in spite of that she performed love marriage with accused No.2. This fact is required to be considered. In Paragraph – 22 it was observed that, all the witnesses deposed that the accused demanded money with the complainant and she was harassed. The complainant has admitted that the complaint is not according to her version and this is false case. Other witnesses are hearsay. The complainant in her cross examination admitted that, accused Nos.6 & 7 are not relatives of her husband. In Paragraph – 30 of the judgment, the trial court has observed that there is inconsistency in the evidence. The complainant's evidence is not cogent and reliable.

5. Learned Advocate for the petitioner relied upon the decision of this Court in the case of **Bhupesh Tukaram Meshram V/s. The State of Maharashtra and Others**, 2017 ALL MR (Cri) 2178, wherein it was observed that, if the accused put on full-fledged trial and at the conclusion of the trial, the trial court comes to the

conclusion that the prosecution has utterly failed to prove the charges against the accused, in such case, the trial Judge will have no option than to acquit accused and would not be justified in giving benefit of doubt. Per contra, if, at the conclusion of the trial, though the Court finds that the prosecution has proved it's case, however, finds that there are certain lacunas in the prosecution case on account of which the accused is entitled to be given benefit, in such a case, the Court may give benefit of doubt to the accused and acquit him.

6. Learned Advocate for the petitioner in fairness submitted at the threshold that the petitioner had challenged the order dated 14th December, 2015 and 26th July, 2016 passed by Law and Judiciary Department of Government of Maharashtra relating to his appointment to the post of Civil Judge Junior Division and Judicial Magistrate First Class by preferring Writ Petition under Article 226 of the Constitution of India and the said petition was dismissed by this Court vide order dated 19th October, 2016. The said order was challenged before the Apex Court and the Special Leave Petition has been dismissed by the Supreme Court. However, it is submitted that, issue involved in the writ petition which has been dismissed by this Court are completely different. Here the petitioner is

seeking the deletion of words 'benefit of doubt' and replacing them with 'clean acquittal'.

7. Learned APP submitted that the prayers sought in this petition cannot be granted. It is in the circumstances which are on record that the case has resulted in acquittal. Writ petition preferred by the petitioner was rejected by the division Bench of this Court. Although it was relating to the communication impugned in the said petition, the observations made by the division bench of this Court which were confirmed by the apex Court are required to be looked into and this Court may not be in position to override the said observation.

8. Learned Advocate for respondent No.2 has relied upon the affidavit-in-reply filed on behalf of respondent No.2. It is submitted that, during the course of trial, there were talks of settlement and in view of that the complainant did not support the prosecution case. The trial court has considered the nature of evidence and by giving benefit of doubt acquitted the petitioner and the other accused. The petitioner is trying to take benefit of his own wrong. The prosecutor has conducted the examination in chief of complainant on 20th June, 2013. Thereafter, the examination-in-chief was continued on 20th June, 2013 and 3rd

January, 2014. The cross examination was conducted at the instance of accused Nos. 6 & 7. Certain changes in the statement of the complainant had occurred. Hindu Marriage Petition for divorce was filed by respondent No.2, it was decided that respondent No.2 and her husband would start living together again. She filed joint pursis on 25th April, 2014 before the Civil Judge and Hindu Marriage Petition was withdrawn. Thus, in these circumstances, the complainant had changed her version. The petitioner had taken certain admissions from the complainant. In view of the observation of the division of this Court, this Court may not in position to appreciate the evidence adduced before the trial Court once again. He relied upon the decision in the case of **Union of India and Others V/s Methu Meda (2022) 1 SCC 1** and another decision of the Nagpur bench this Court in the case of **Ravindra Prasad Munneshwar Prasad V/s Union of India and Ors.** in Criminal Writ Petition No.1917 of 2021.

9. I have perused the documents on record. It is not debatable that the petitioner was acquitted by the trial court. While acquitting the petitioner, it was observed that, considering the evidence on record, the accused are entitled for benefit of doubt and thus acquitted them. In the case of **Bhupesh Meshram (supra)** the

division Bench of this Court has observed that the trial Court found that the evidence of prosecutrix was not of such nature on basis of which conviction can be based - Question before the Writ Court is whether in such case could a person be stamped with acquittal by giving benefit of doubt. The difficulty which would come in the way of the petitioner herein is that the petitioner had preferred Writ Petition No. 2232 of 2018 before this Court which was disposed of. Vide order dated 19th October, 2016, in paragraphs – 9, 10 & 11, the division bench has observed that it can hardly be disputed that a member of the judicial service is a very important person, who dispenses justice to the citizens even in the most remote areas in the State. The ordinary citizen is not always in a position to approach the superior Courts for justice and very often his fate is decided by the Judges of the lower judiciary. This therefore, clearly indicates that a judge of the lower judiciary clearly plays a very important and pivotal role in the administration of justice and which is one of the great pillars of our vibrant democracy. Considering the functions that a member of the judicial service is require to carry out, he has to be one who is balanced, has a sense of fairness, has a decent knowledge of the law and his character is unblemished. These characteristics are extremely vital when choosing a candidate for judicial service. It is only in such

circumstances that a perception would be created in the mind of the litigant that not only is justice done but also seen to be done. It is pertinent to note that, in the said petition under Article 226 of the Constitution of India, the petitioner had sought directions to set aside the communication orders dated 14th December, 2015 and 26th July, 2016 passed by Law and Judiciary Department. The case of the petitioner was that, despite being recommended to the said post and included in the merit list on the basis of opinion/recommendation of respondent No.2 therein, it was decided not to recommend the name of the petitioner in judicial service. The petitioner in this petition prayed for deleting the observations of the trial Court that the acquittal is on account of benefit of doubt. The purpose of seeking such directions by the petitioner is on account of the fact that the petitioner's name is recommended for such post. In paragraph – 10 of the said decision it is observed that criminal case was filed against the petitioner and charges were levelled against him under Sections 498-A, 323, 504, 506 r/w Section 34 of IPC. What is also important to note that when the petitioner applied for the said post, a criminal case was pending against the petitioner. One can hardly dispute that the charges levelled against the petitioner were extremely serious and not of a petty nature. The judgment of acquittal records that the

evidence of the complainant was not cogent and reliable and hence corroboration by independent witnesses was required but not forthcoming. Moreover, the complainant has given important admission that create a doubt about the ill-treatment for demand of Rs.1 Lakh and there was no evidence on record to show that the accused person drove out the complainant from the house for illegal demands and complainant caused injury to herself due to such ill-treatment. Further, the complainant had thereafter become hostile and has stated that this was a false case and she has not supported the contents of the complaint. Looking at this, the learned Magistrate found that the prosecution had failed to prove the offences against the accused beyond reasonable doubt and hence acquitted all the accused. It is pertinent note that the aforesaid decision was challenged by the petitioner before the apex Court by preferring Special Leave Petition which has been dismissed vide order dated 7th March, 2022. Thus, this Court is again required to scrutinize the observations of the trial Court and the evidence on record which is already appreciated by the division bench of this Court. In these circumstances, the propriety does not demand that this Court shall again go into the said aspects. Hence, it would not be possible to grant the relief sought in this petition.

ORDER

- i. Criminal Writ Petition No.1908 of 2018 is rejected and disposed off.

(PRAKASH D. NAIK, J.)