



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.139 OF 2018

Rajendra Dnyaneshwar Patil,
Age : 57 years, Occu. : Business,
R/o. Plot No. 38, Sadguru Nagar,
Old MIDC area, Jalgaon.

Presently residing at Anand Complex,
3, Alkapuri, Society, Paud Road,
Kothrud, Pune - 411 029.

... Applicant.

Versus

1. Balkrishna sonu Nehete,
Age : 64 years, Occu. : Medical Practitioner,
R/o. : 180, Gandhi Nagar, Jilha Peth,
Jalgaon.

2. State of Maharashtra

... Respondents.

...
Mr. Mehul Vikas Navandar, Advodate for Applicant
Mr. N. V. Gaware, Advocate for Respondent.
APP for Respondent No.2 : Mr. N. D. Batule
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 5th APRIL, 2024

PRONOUNCED ON : 10th APRIL, 2024

ORDER :

1. Dissatisfied by the order of acquittal of present respondent in R.C.C. No.45 of 2004 from offence punishable under sections 406, 417, 419, 465, 468 and 471 of Indian Penal Code (IPC), original complainant is intending to file appeal and hence, instant leave application.

2. According to learned counsel for applicant, complainant is a businessman resides at Pune. He is beneficiary allotment of shop No.77 at Jalgaon Jain Market. Accused is his brother-in-law and in view of such relations, he was allowed to occupy and run clinic in the said shop. It is submitted that, however, taking disadvantage of relations and stay of complainant at Pune, without consent and authorization of complainant, by forging documents and by impersonation, transferred the shop in his own name. Therefore, complaint was filed, but unfortunately learned trial court acquitted the accused, holding that, offence has not been proved beyond reasonable doubt. That, learned trial court has primarily disbelieved handwriting expert's evidence, which was positive. It is further pointed out that, applicant complainant had instituted civil proceedings against accused, but the said suit was dismissed and therefore the appeal has been preferred for the same. That, there is improper appreciation of evidence, and therefore, appeal is intended to be filed against order of acquittal and hence he prays for leave.

3. Learned counsel for respondent accused pointed out that, learned trial court has considered each and every legal aspect. Essential ingredients for attracting the offence has not

been made out. According to him, documents placed in criminal court, the same documents were in civil suit, but the suit has been dismissed. He pointed out that, previous attempt of seeking registration of crime by invoking 156(3) of Cr.P.C. went futile, police having filed report under section 169 of Cr.p.C. Therefore, according to him, there is no good ground for granting leave.

4. Heard both sides. Perused the papers and judgments. In support of his case complainant adduced his own evidence (Exh.50) and has also tendered documentary evidence and also evidence of one Sunil Ambilwade, who is a handwriting expert.

5. Prima facie going through the judgment sought to be challenged, it seems that, learned trial court has acquitted the accused solely disbelieving the handwriting's expert evidence, which is primarily mere opinion evidence. Similarly, the Executive Magistrate before whom affidavit was said to be prepared not being examined seems to be another ground for acquittal. Opinion of trial Judge also primarily seems to be based on failure of complainant in succeeding civil suit, of which undisputedly appeal is still pending. Therefore, prima facie there are debatable issues, which could be dealt only in appeal. There are allegations of commission of offence under sections 406, 417, 419, 465, 468 and 471 by impersonation.

Resultantly, leave as prayed deserves to be granted. Accordingly, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)