



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.637 OF 2024
IN
CRIMINAL APPEAL STAMP NO.6389 OF 2023

Waman s/o Laxman Wankhede
Vs.
Ashok s/o Kanhaiyalal Tak and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Gadmade, Counsel for applicant.
Mr. Rajesh Durge, Counsel h/f Mr. Rajnish Vyas, Counsel for the
non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/08/2024

1. By preferring this application, the applicant is seeking leave to file an appeal against the acquittal passed by the learned Judicial Magistrate First Class, Murtizapur in SCC Case No.1348/2016.

2. The brief facts of the case are as under:

The complainant has filed the complaint before the learned Judicial Magistrate First Class, Murtizapur alleging that he is the reputed and law abiding person holding movable and immovable property in village Shelu Vetar, Taluka Murtizapur. On 11.03.2013, accused No.1 had filed complaint against him at Police Station, Murtizapur, alleging therein that the present complainant quarreled with him, assaulted his son and caused the injury by biting on

the left hand of his son i.e. the accused No.2. On the basis of the said report, Police Station Officer, Murtizapur registered the offence against the complainant under Sections 324 and 504 of the Indian Penal Code bearing Crime No.60/2013. After completing the investigation, the charge-sheet was filed against the complainant in the said matter. During the trial of the said case, the Court recorded the certain findings while deciding the case on merits and the complainant was acquitted for the offences punishable under Sections 324 and 504 of the Indian Penal Code.

3. During the trial of the said case, the evidence of the witnesses including the present accused came to be recorded before the Court. During the testimony of the accused Nos.1 and 2 certain facts came on record which disclosed that, the accused had lodged a false complaint against the present complainant. It was further observed that there was no reliable, cogent and corroborative evidence on record to prove the offence against the present complainant. On the other hand, present accused disclosed in the said case that on 11.03.2013, the present complainant lodged police report at Police Station, Murtizapur against them. Therefore, to counter to the same, the present accused lodged a false complaint against the present complainant with intention to prosecute him maliciously. Accused No.2 caused self inflicted bite

injury on his hand and on that ground also lodged false complaint against the present complainant.

4. It was further alleged by the complainant that due to the prosecution of the complainant the image and reputation of the complainant was lowered down. The false allegations are made against him and thereby the accused have committed the offence under Section 500 read with 34 of the Indian Penal Code.

5. The learned Judicial Magistrate First Class has taken cognizance and issued the process against the accused for the offence punishable under Section 500 read with Section 34 of the Indian Penal Code.

6. In order to prove the guilt of the accused, the complainant examined himself as well as the witnesses namely Waman Laxman Wankhade and Draupadabai Laxman Wankhade and closed his evidence.

7. After appreciating the evidence, the learned trial Court passed a reasoned judgment wherein it is held that the ingredients of the offence or the requirement of Section 499 of the Indian Penal Code is not fulfilled and acquitted the accused.

8. Heard learned Counsel for the applicant who submitted that the observation of the learned trial Court is erroneous and while acquitting the

accused/non-applicants, the learned trial Court has not considered that the evidence of the complainant as well as the witnesses shows that the complainant was maliciously prosecuted and due to which his image was harmed and thereby the non-applicants have committed the offence under Section 500 read with Section 34 of the Indian Penal Code.

9. Learned Counsel for the non-applicants invited my attention towards the reasoning in para No.21 and submitted that by assigning the reasons, the learned trial Court has rightly acquitted the accused/non-applicants and there is no case made out for grant of leave.

10. After hearing the learned Counsel for both the sides. Perused the impugned judgment. On perusal of the impugned judgment, it reveals that the allegation against the present non-applicants/accused is that they have filed a false complaint against the complainant which resulted into the acquittal. Thus, the image of the complainant was lowered down. The learned trial Court has considered this aspect in the impugned judgment and while discussing the evidence it is observed by the learned trial Court that during cross-examination, the complainant admitted that one Taruna Kandobalad has lodged report against him and case is pending before this Court. It further came in the evidence that there is no corroboration to the version of the complainant from the other evidence. On the report

of the present accused and on the basis of the medical report, the police registered the offence against the complainant and after investigation filed charge-sheet. The Court has acquitted the complainant as some witnesses were turned hostile.

11. As far as the false implication is concerned, there is no observation in the judgment that the false complaint was filed by the accused/non-applicants and therefore, the non-applicants are acquitted.

12. In para No.21 of the said judgment the trial Court observed that in order to justify a charge under section 500 of IPC it is required that the allegations satisfy requirement of section 499 of IPC as also the explanations appended thereto. It is further observed that it is thus required to be shown by an aggrieved person that the imputation which has harmed his reputation, directly or indirectly lowered his moral or intellectual character in the estimation of others. In the event, the moral or intellectual character of aggrieved person is not lowered in the estimation of the other persons, making of the imputation cannot perse lead to commission of offence of defamation. No independent evidence is adduced by the complainant to show that, due to said report by the accused, he was not getting the work, the people were looking towards him badly and he was defamed. Even the evidence of

complainant's mother nowhere shows that her son was defamed.

13. Thus, the requirement under Section 499 of the Indian Penal Code are not fulfilled and therefore, the learned trial Court has acquitted the accused/non-applicants.

14. It is further observed by the learned trial Court that in earlier judgment wherein the complainant was prosecuted there is no observation of the court that, the witness Usha Polkat has given false evidence. The evidence adduced by the complainant is not sufficient to prove that the accused had lodged false report against complainant due to which he is defamed.

15. Thus, considering the reasoning given by the trial Court it reveals that trial Court has come to the conclusion that no case is made out to attract Section 500 of the Indian Penal Code, on the basis of the evidence. As the complainant failed to adduce the evidence to show that his imputation was harmed. Moreover, there is no observation of the trial Court that complainant was implicated in a false case.

16. Thus, considering the reasoned order passed by the learned Judicial Magistrate First Class, Murtizapur, no grounds are made out by the applicant to grant leave to file an appeal against the acquittal.

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The application is devoid of merits, hence deserves to be rejected. Accordingly, it is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate