



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION FOR LEAVE TO APPEAL (PVT) NO.60 OF 2025**

Suhas D. Khandke

...Applicant

V/s.

State of Maharashtra

...Respondent

Mr. Vijay P. Hiremath *for the Applicant.*

Mr. Shailesh S. Ghag, *APP for Respondent-State.*

Mr. Vikram N. Walawalkar *for Respondent Nos.2 to 5 with Mr. Rohan A. Desai.*

CORAM: SANDEEP V. MARNE, J.

DATED: 16 JANUARY 2026.

P.C.:

1) This is an Application seeking leave to file appeal under sub-section (4) of Section 378 of the Code of Criminal Procedure, 1973, against order of acquittal dated 21 October 2024 passed by the learned Additional Chief Judicial Magistrate, 5th Court, Dadar (at Sewree), Mumbai, acquitting the Respondent Nos.2 to 5 of offences punishable under Sections 427, 447 and 504 r/w. Section 34 of the Indian Penal Code, 1860.

2) I have heard Mr. Hiremath, the learned counsel appearing for the Applicant, Mr. Ghag, the learned APP for Respondent No.1 -

State and Mr. Walawalkar, the learned counsel appearing for Respondent Nos.2 to 5.

3) Perusal of the findings recorded by the learned Magistrate would indicate that the Respondents-tenants had applied to the Complainant-landlord on 10 September 1996 for permission for carrying out extra work such as putting of a shutter and construction of toilet. The Complainant-landlord granted such permission in writing by making an endorsement on the Application dated 10 September 1996. The learned Magistrate has taken note of the factum of permission granted by the Complainant-landlord and has accordingly negated the theory of trespass or mischief being committed by the Respondents-tenants.

4) Mr. Hiremath, the learned counsel appearing for the Applicant submits that permission was granted for construction of a toilet inside the shop whereas the Respondents/tenants constructed the toilet in the passage and outside the shop. However, it is seen that the Complainant did not lead any evidence before the Magistrate about exact location of the concerned toilet. In his cross-examination the Complainant-landlord specifically admitted that except his bare words he did not have any evidence to prove that construction of the toilet was in the passage and outside the tenanted premises.

5) Mr. Hiremath relies on evidence of photographer in support of his contention that construction of toilet is outside the tenanted premises. However, perusal of the evidence of the photographer would indicate that he has treated the alleged

construction as extra room and not a toilet. Secondly, the photographer has merely taken photographs and is not in a position to depose as to whether the structure, of which he took photographs is a part of original tenanted premises or an extension. In my view, therefore, there is total absence of evidence on record to prove an act of mischief or an act of trespass. This appears to be clearly a landlord-tenant dispute aimed at recovering possession of the tenanted premises from the tenant. Criminal law appears to have set in motion for the purpose of speedier recovery of the premises by the landlord. It appears that the Complainant-landlord has also instituted suit for recovery of possession of premises in the Court of Small Causes. This is the correct remedy, which ought to have been exercised by the Complainant-landlord in the year 2010 when the Complaint was filed. The issue of violation of terms of tenancy would be adjudicated independently in civil proceedings uninfluenced by the observations in the impugned order.

6) Considering the above position, in my view, granting leave in favour of the Applicant would be an exercise in futility. Application for leave to file appeal is accordingly **rejected**. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]