
(2009) 02 BOM CK 0108

In the Bombay High Court

Case No : Criminal Revision Application No. 9 of 2009

Ms. Teresa D'Souza

APPELLANT

Vs

Norman Albuquerque and Another

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 426, 427, 447, 504, 509

Citation : (2009) 02 BOM CK 0108

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : Nigel De Costa Frias, for the Appellant;

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This revision is at the behest of the first informant, upon whose complaint a case was investigated and a charge sheet was filed under Sections 447, 504 and 427 IPC. The respondent/accused came to be acquitted by judgment/order dated 20/09/2008. Heard Shri De Costa Frias, learned Counsel on behalf of the petitioner/first informant. The first informant was examined as PW1. The accused is the husband of the first informant's niece by name Loraine D'Souza/PW4. The first informant has a brother by name Leonard D'Souza/PW3, who teaches in a Higher Secondary School at Mandrem and all the witnesses examined in the case were residents of Mandrem, including the panch witnesses. There was an earlier case filed by her, against the accused which ultimately ended in fine of Rs. 1,000/-being imposed against the accused, each u/s 509 and 426 IPC, in default 3 months SI. It appears that presently relations between Loraine D'Souza/PW4 and her husband, the accused are also strained.

2. It appears that the very complaint was written down by the first informant's brother, the said Leonard D'Souza/PW3 and was signed by the said first informant. The relations between the first informant and the accused are bound to be strained on account of the said conviction.

3. The learned trial Court, upon considering the evidence produced by the prosecution, came to the conclusion that the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt and proceeded to acquit the accused u/s 447, 504 and 427 IPC. Counsel appearing on behalf of the first informant submits that there might have not been acceptable evidence as far as charge u/s 504 is concerned, but learned Counsel contends that as far as the acquittal of the accused u/s 447 as well as 427 IPC is concerned, there was no room for the said acquittal.

4. The accused appears to be claiming co-ownership to the said house, through the said niece. This can be seen from the relevant part of the judgment:

A question was put to this witness that the accused is the co-owner and has been exercising his right and have been visiting his property as per law and that she was obstructing him and making false allegations against him, the witness has kept quite. She has conveniently declined to answer this question and therefore and adverse inference can be drawn so much so that she has kept quite when the question is to put to her that the accused is one of the co-owner of the said property. That being so the criminal trespass does not survive at all.

5. The learned trial Court has observed that it was necessary for the first informant to have proved that she was in exclusive possession of the suit house and that, from overall evidence brought out by the prosecution Section 427 IPC was not attracted. The learned trial Court has found that Raghoba Gaude/PW5 is a chance witness as he was also from Mandrem and, therefore, has not placed reliance on his testimony. The learned trial Court has also found that the evidence of Loraine D'Souza/PW4, the said niece of the first informant, was filled with contradictions and that she had made several improvements and, therefore, her evidence could not be relied upon. Considering the inconsistencies in the evidence of the prosecution witnesses examined in support of the case of the prosecution, in my opinion, the acquittal of the accused could not be faulted. In fact, it was one of the plausible views to have been arrived at from the evidence produced. Hence, this is not a fit case for interference. The revision, therefore, is hereby dismissed.