

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 60 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAVINCHANDRA CHUNILAL DAVE

Versus

JAGDISHCHANDRA PRANJIVAN JADAV

Appearance:

MS MAMTA R VYAS for Petitioner
MR HN JHALA for Respondent No. 1
MR MJ DAGLI for Respondent No. 2
SERVED for Respondent No. 3
MR.LR PUJARI AGP for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 30/09/97

ORAL JUDGEMENT

1. The appellant by filing this appeal under Section 378 (4) of the Code of Criminal Procedure,1973, has challenged the legality and validity of the judgment and order passed by the learned Judicial Magistrate First

Class in Criminal Case No.239 of 1982,dated April 29, 1983, whereby the respondent Nos. 1,2 and 3 were acquitted from the charge framed against them under Section 24 (1) (4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (to be referred to as " the Act " for short).

2. The appellant who is the original complainant filed a complaint before the learned Judicial Magistrate First Class, Dhangadhra, alleging that he was a tenant of respondent Nos. 1 and 2 and was paying rent of the disputed property at the rate of Rs.11/- per month. It is alleged that respondent No.3 was managing the disputed property and was issuing rent receipt to the appellant. It is alleged that respondents were not allowing the appellant to use the latrine which was situated in the disputed property. It is further alleged that as the latrine was an essential supply or service, respondents cannot stop the essential supply or service which was enjoyed by the appellant as a tenant of the disputed property. The said complaint was registered by the learned Judicial Magistrate First Class, Dhangadhra as Criminal Case NO.237 of 1982. The summons were issued to the respondents and they appeared before the learned Magistrate.

3. The respondents were read over the contents of the complaint and their plea was recorded at Exh.4. Respondents pleaded not guilty and claimed to be tried.

4. In support of his claim, the appellant examined himself at Exh.8. One Kaushikray Bhanushankar who is the neighbour of the appellant was examined at Exh.54. The appellant also produced documentary evidence such as Municipal tax receipt, rent receipt, copy of the application for standard rent and other documentary evidence and report of the commissioner in support of his evidence. The learned Judicial Magistrate First Class after appreciating the oral as well as documentary evidence and after appreciating the arguments of the learned advocates for the appellant and respondents, came to the conclusion that the appellant failed to prove that the disputed latrine which was an essential supply or service was let out to the respondents. The learned Magistrate also held that the appellant has not proved that he was using the disputed latrine. The learned Magistrate also concluded that the appellant had not produced any documentary evidence in support of his case that the disputed latrine was used by him since the inception of his tenancy right. In view of the above referred conclusions, the learned Judicial Magistrate

First Class, Dhangadhara, acquitted the respondents-original accused from the charges framed against them which has given rise to this appeal by the original complainant.

5. I have gone through the entire oral as well as documentary evidence produced on the record of the case. The oral as well as documentary evidence does not prove that the appellant had enjoyed the disputed latrine as a tenant. The conclusion of the learned Magistrate to that effect requires to be upheld. The evidence produced on record does not prove that the respondents had withheld or cut off any essential supply or service enjoyed by the appellant-tenant in respect of the premises let out to him. The order of acquittal recorded by the learned Magistrate, in my opinion, does not call for any interference by this Court in this acquittal appeal which is filed under Section 378 (4) of the Code of Criminal Procedure.

6. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence and the learned Judge who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convincing me to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

7. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

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