

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.:147 OF 2003

Girijabai D/o Laxman Khandare,
Age: 25 years, Occu.: Labourer,
R/o Village Shirli, Tq. Basmathnagar,
Dist. Hingoli.

... **PETITIONER**

VERSUS

1. Sugat S/o Dharmaji Ingde,
Age: 23 years, Occu.: Labourer,
R/o Shirli, Tq. Basmathnagar,
Dist. Hingoli.
2. The State of Maharashtra.
(Copy to be served on Government
Pleader, High Court, Bench at
Aurangabad).

... **RESPONDENTS**

Mr. G. R. Syed, Advocate holding for Mr. P. R. Katneshwarkar.
Mrs. R. K. Ladda, A.P.P. for Respondent No.2.

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CORAM:-

T. V. NALAWADE, J.

DATED:-

25th JUNE, 2015.

JUDGMENT:

1. The petition is filed for direction against the State Government to file appeal against judgment and order of Sessions Case No.213 of 2001 which was pending in the

Court of learned Additional Sessions Judge, Parbhani. The learned Additional Sessions Judge has acquitted the present Respondent in a State case filed for the offences punishable under sections 376 and 507 of Indian Penal Code. Both the sides are heard.

2. The F.I.R. was given by present Petitioner on 6th August, 2001 against the Respondent. It is her case that her marriage with one Devrao had taken place about 5 years prior to the date of report but Devrao had deserted her and so she was living with her mother. She was working as vegetable vendor and she was visiting Basmath for this business. There she became acquainted with present Respondent. It is her case that Respondent promised to marry with her and then established physical relationship with her. It is her case that Respondent had taken sexual intercourse with her many times by giving promise of marriage. It is her case that the persons like Dayanand and Shrirang knew this relationship and Respondent had given promise of marriage in their presence.

3. It is her case that on the date of F.I.R. she was carrying of 5 months and when she had approached the Respondent and had requested to marry, he had refused to marry. It is her case that the Respondent gave threat of life and so she approached police. The crime was registered for aforesaid offences and after investigation the charge sheet came to be filed. The Respondent pleaded not guilty to the charge and he took defence of total denial.

4. In Sessions Court the prosecutrix examined herself and gave evidence as per aforesaid contentions. She was referred to Government Hospital after registration of the crime and she delivered a female child subsequent to the filing of the case.

5. Indubai, mother of the prosecutrix, has given evidence that prosecutrix never lived with her husband. She has given evidence that she knows accused and the prosecutrix had left her house and she had gone with the account about 1-1/2 years prior to the date of deposition. She has given evidence that prosecutrix has a daughter

but does not know as to who is father of this daughter. Indubai was declared hostile and learned A.P.P. has cross examined Indubai. Shrirang, P.W.3 is examined by the prosecution but he also turned hostile. Similarly Dayanand turned hostile.

6. The evidence on the record shows that prosecutrix was pregnant on the date of F.I.R. Even mother of the prosecutrix has not supported the prosecutrix. Even if the version of the prosecutrix is accepted as it is it can be said that she was married women, she came in contact with the Respondent and they had the relationship. The trial Court has placed reliance on the reported case “**State of Maharashtra V/s Udhav**” reported in **2002 (3) Crimes 203 S.C.** In this case, the Apex Court has observed that when the prosecutrix was major, she had kept relation with the man though there was a promise of marriage and the marriage did not take place, conviction cannot be given for offence punishable under section 376 of I.P.C. Thus, even if the allegations of the prosecutrix are accepted as they are, it was not possible to convict the present Respondent. In view of these circumstances, even if the state wanted to

file appeal this Court would not have granted the leave to file appeal. This Court holds that no such permission can be given.

7. In the result, petition stands dismissed. Rule discharged.

[T. V. NALAWADE, J.]

Dated:25/06/2015.
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