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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.193 OF 2000.**

The State of Maharashtra

]... Appellant

V/s.

Sudeep Pradipkumar Pal
r/o Lakeview Park Building No.4/10
Sutarwadi, Pashan,
Pune

]]
] Respondent
] Ori. Accused
]

Ms. Rajeshree Gadhvi, APP for the Appellant State

Mr. M. V. Limaye and Mr. N. R. Bubna, for the Respondent-
State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JUNE, 2015.

ORAL JUDGMENT :

1. By this appeal, the State is challenging the acquittal of the respondent for the offence punishable under Section 509 of the Indian Penal Code, in pursuance of the

order dated 4th December, 1999, in Summary Case No.776 of 1997, passed by Judicial Magistrate First Class, Pune.

2. Facts, as are necessary for deciding this appeal, can be stated as follows :-

The husband of the informant, few days prior to the incident, has given report to the Telephone Department requesting that as his wife is receiving unwarranted and obscene calls on the telephone number in his house, the said telephone number should be kept under observation and surveillance. Accordingly, the Telephone Department acted and kept the said telephone number under observation. Hence when similar such obscene calls were received on 7.9.1997 and 22.9.1997, calls were traced to Telephone No.386581 which was found registered in the name of the father of respondent. Hence on the complaint of informant, crime came to be registered against respondent for the offence punishable under Section 509 of the Indian Penal Code. Respondent was arrested and on completion of investigation, chargesheet came to be filed against him in the trial Court.

3. The plea of the respondent came to be recorded vide Exh.8. Respondent pleaded not guilty and claimed trial. Meanwhile, he also filed an Application Exh.10 seeking dismissal of the complaint on the ground that the permission of the Court as required under Section 155(2) of Code of Criminal Procedure, was not obtained before taking cognizance of the offence.

4. On this application Exh.10, the trial Court heard learned counsel for respondent and learned APP and was pleased to allow the said application and dismiss the complaint, thereby acquitting the respondent for the offence punishable under Section 509 of IPC.

5. This order of the trial Court is the subject matter of this appeal.

6. According to learned APP, as the offence attributed to the respondent is punishable under Section 509 of the IPC and as said offence is cognizable, the trial Court has committed an error in dismissing the complaint for want of permission from the Court. In the opinion of learned APP,

therefore, the impugned order of the trial Court is required to be quashed and set aside.

7. Per contra, learned counsel for respondent Shri. Limaye has supported the order of the trial Court by submitting that there is absolutely no prima facie material to implicate the respondent for the offence under Section 509 of the IPC. The respondent is charged for the offence under Telephone Rules and those Rules make it clear that the offence for breach of those Rules is not cognizable. The permission of the Court was therefore essential under Section 155 (2) of the Code of Criminal Procedure, before taking cognizance. As no such permission was obtained, the trial Court has rightly dismissed the complaint.

8. While appreciating their rival submissions, it has to be noted that as regards offence under Section 509 of IPC, absolutely no iota of material is produced on record to show which were the words uttered by caller in the telephone calls made to the informant. The alleged transcript of the calls is not at all produced before the trial Court though the trial Court, by issuing letter to the Telephone Department, called upon it to do so. Unless and until the details as to the words uttered in the telephone calls made to the

informant are brought on record, it will not be possible to infer that those words were used intending to insult the modesty of any woman or they were intended to intrude upon privacy of such woman. The Telephone department has also not produced on record the register maintained by it showing the time and date of the calls, details of the calls, particulars and nature of the calls so as to know whether the calls made were containing words intending to insult the modesty of the informant. Hence there is absolutely no material on record to make out ingredients of the offence punishable under Section 509 of IPC.

9. At the most, therefore, offence which prosecution can allege against respondent is that of committing the breach of telephone rules. However, in respect thereof also, the prosecution has not produced on record any evidence to show contents of conversation. Admittedly concerned Telephone number 386581 was standing in the name of father of respondent. There is nothing on record like voice identification to prove that calls were made by the respondent. Moreover, the breach of telephone rules being a non cognizable offence, permission of the Court was essential before taking cognizance of the offence and no such permission was obtained in this case as observed by the trial Court.

10. In view of these lacunas and infirmities in the

prosecution case, the trial Court has rightly dismissed the complaint and acquitted respondent. The appeal, therefore, holds no merit and hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]