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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.3 OF 2015

The State of Maharashtra

... Applicant

V/s.

Suraj Ramraj Pardeshi

.... Respondent

Mrs. A.S. Pai, APP for Appellant State.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 13th JULY, 2015.

P.C. : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. The State has preferred this application seeking leave to file appeal against the judgment and order dated 23.9.2014, of Additional Sessions Judge, Pune, in Sessions Case No.179 of 2009, thereby acquitting respondent for the offences punishable under Sections 376, 420, 313 and 511 of the Indian Penal Code.

2. Brief facts, as are necessary for deciding this application, may be stated as follows :-

P.W.1 prosecutrix (her name is withheld to protect her identity), is a young girl, who had come to reside with her sister Sangita at Uttamnagar locality. Respondent was residing in the same locality and working as L.I.C. agent. Prosecutrix became known to respondent as he used to come to the house of her sister in respect of L.I.C. policy. Her acquaintance with respondent developed into friendship and thereafter into love affair. Respondent also gave her promise of marriage and had sexual relations with her from time to time. As a result of it, prosecutrix became pregnant. Respondent, however, when was confronted with his promise of marriage, withdrawn from it and also disowned paternity of child in her womb. Prosecutrix, therefore, went to Kothrud Police Station and lodged complaint against them on 1.12.2007.

3. She was referred then to Sasson Hospital for medical examination. D.N.A. test of the child in her womb was conducted. However, her pregnancy came to be aborted with her consent by the Doctor who had conducted D.N.A. test. Police Inspector,

Bhosale, who has conducted investigation in the case arrested respondent, sent medical samples to Chemical Analyzer and further to completion of investigation filed chargesheet in the Court.

4. Trial Court framed charge against respondent vide exh.4 Respondent pleaded not guilty and claimed trial.

5. In support of its case, prosecution examined four witnesses viz P.W.1 prosecutrix, P.W.2 one Hanumant Mokashi who has tried to mediate between the parties. P.W.3 Sangita, the sister of prosecutrix and P.W.4 Investigating Officer Police Inspector Bhosale.

6. On appreciation of their evidence, the trial Court was pleased to acquit respondent of all the charges levelled against him and arrived at a finding that it was a case of consensual sex. Against this judgment, State has filed this application seeking leave to prefer an appeal to quash and set aside acquittal of the respondent.

7. We have heard learned APP and with her able assistance perused the evidence and the judgment of the trial Court.

8. The prosecutrix in this case has in her evidence itself admitted the fact that respondent was known to her as he used to come to the house of her sister Sangita. As admitted by her, her acquaintance developed into friendship and thereafter into love affair. In her cross-examination, she has further confirmed that she was knowing respondent since 5 to 6 months prior to the incident. Since then, they were in love with each other. P.W.2 Hanumant Mokashi deposed that prosecutrix had love affair with respondent. The evidence of prosecutrix reveals that she does not remember her birth date. However, in evidence before the Court she has told her age as 23 years. Her evidence was recorded on 2.11.2009. As per her evidence, incident has happened in the year 2007. Therefore, as on the date of incident, she was major girl. In such situation, when she was also working lady as deposed by her and hence educated and attained

maturity and majority to know consequences and implications of her act, then it becomes difficult to accept that she has consented to have sexual intercourse with respondent only because he has given promise of marrying with her. The very fact that she was in love with respondent and on more than one occasion as deposed by her, they had sexual relations, negates her evidence that sexual intercourse was against her consent and without her will or only because of the assurance given by respondent of getting married with her.

9. As held in the case of **Uday -vs- State of Karnataka AIR 2003 SC 1639**, “the consent given by prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date cannot be said to be given under a misconception of fact”. Merely because respondent cannot fulfill his alleged promise of marriage, case does not come within the purview of either Section 376 or 420 of IPC. There is distinction between mere breach of promise and not fulfilling promise.

10. As held by Supreme Court in **Deepak Gulati -vs- State of Haryana, 2013 (7) SCC 675**. When the prosecutrix was major at the relevant time and hence capable of understanding the complications and issues surrounding her marriage to the accused and had love affair and had sexual relations with the accused out of love and passion for the accused, such case is required to be treated differently from the cases of rape.

11. In the instant case there is no evidence proving that respondent had sexual intercourse with prosecutrix, was without her consent and against her will. There is also no evidence to prove that respondent has at the time of giving promise of marriage, had no intention to fulfill the same. Therefore, neither charge under Section 376 nor Section 420 of IPC can be held to be proved against respondent.

12. As regards charge under Section 313 of IPC, as per prosecutrix, Doctor who has taken D.N.A. test has aborted her pregnancy. However, prosecution has not led any evidence on

record to prove this charge. Moreover, the allegation is against Doctor and not against respondent. No prosecution is launched against Doctor. Moreover, as observed by trial Court from the complaint itself, it was clear that after lodging report, she voluntarily had been to the police station, disclosed her intention to undergo abortion. Police Officer, accordingly issued requisition letter in the name of Dean, Sasson Hospital and with the consent of prosecutrix, the pregnancy was terminated.

13. In the light of above evidence on record, we are of the considered opinion that the view adopted by the trial Court being possible and probable view, no interference is warranted in the said view. This application seeking leave to prefer appeal against judgment of trial Court is hence liable to be dismissed. Accordingly application stands dismissed. Leave to appeal is refused.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V. K. TAHILRAMANI, J.]