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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.474 OF 2015.**

Ms. Meera Chotelal Baiga	]	
age 32 years, Occn. Cook	]	... <u>Appellant</u>
Kirtanebaug Mundhwa	]	Ori. Complainant
Pune 411036	]	

V/s.

1. Mr. Chetan Shashikant Dube,	]	
age: 27 years, Occn. Nil	]	
residing at: Swami Samarth Nagar,	]	 <u>Respondents</u>
Nanded Phata, Pune	]	Resp. No.1 ori.
	]	accused.
2. The State of Maharashtra	]	

Mr. Biju Antony Aloor, for Appellant.

Mrs. A.S. Pai, A.P.P., for the Respondent-State.

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

DATE : 29th JUNE, 2015.

ORAL JUDGMENT : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by original complainant/prosecutrix taking an exception to the judgment and order dated 2.12.2014, passed by the Additional Sessions

Judge, Pune, in Sessions Case No.502 of 2011, thereby acquitting the respondent accused for the offence punishable under Sections 376 and 420 of the Indian Penal Code.

2. The facts, as are necessary, for deciding this appeal may be stated thus :-

The prosecutrix in this case (the name is withheld to protect her anonymity), is a married lady having two children and residing with her husband in a rented room at Mundhwa. In June, 2008, she became acquainted with the accused. Both of them started meeting each other and having sexual relations. In December, 2010, when the prosecutrix came to know that the accused was about to perform marriage with another girl, she intervened and stopped that marriage and again both of them started meeting and having sexual relations. On 26.5.2011, the prosecutrix came to know that the accused was to perform marriage at Alandi, she went there with police and again obstructed accused from getting married. Then she went to the police station and lodged complaint against the accused. On her complaint C.R.No.78 of 2011 came to be registered and after recording statements of

witnesses and arrest of the accused, chargesheet came to be filed in the Court.

3. On committal of the case to the Sessions Court, the trial Court framed charge against accused vide Exh.18. The accused denied the guilt and claimed trial.

4. In support of its case, the prosecution examined in all five witnesses and on appreciation of their evidence, the trial Court acquitted the accused on both the charges as aforesaid.

5. In this appeal, we have heard learned counsel for the appellant and learned APP for the State. In our considered opinion, the appeal holds no merit and deserves to be dismissed, for the reasons to follow :-

6. As stated above, the prosecutrix at the time of incident was a married lady residing with her husband and having two children. She was also working as maid servant. She came to know accused in June, 2008 and their acquaintance flowered into love affair. In the complaint

Exh.29 itself she has stated to the effect that the accused was frequently coming to her house. Hence both of them started loving each other. When her husband came to know about the same, he left her with two children and went to reside at his native place. Thereafter the prosecutrix and the accused, as stated by her in the complaint and also in the evidence before the Court, started cohabiting together keeping sexual relations.

7. Thereafter in December, 2010 when she came to know that the accused was going to marry the daughter of his maternal uncle, she disclosed about her relations with the accused to his maternal uncle and got cancelled the said marriage. Thereafter also both she herself and the accused continue to meet and have sexual relations. However, when accused made another attempt to get married, on 26.5.2011, she has lodged complaint.

8. Thus, the averments in the complaint and the evidence before the Court are more than sufficient to reveal that the prosecutrix was in love with the accused and hence out of her own accord and free will she had sexual relations

with the accused. The only vague averment is made to the effect that the accused had told her that both of them will get married and hence she had sexual relations with him. However, merely on the basis of such vague averment, it becomes difficult to accept that her consent for sexual relations was not a free consent or it was obtained by any misconception of fact. When admittedly she herself was married and had not taken any divorce from her husband, there was no question of accused giving her any promise of marriage and relying on that promise, she consenting for sexual relations. Further it is also pertinent to note that even after December, 2010, when she got cancelled his marriage with matrimonial uncle's daughter, she continued to have sexual relations with him. There is nothing in her evidence to show that the accused had thereafter also given promise of marriage. It is also difficult to accept that she will rely upon such marriage when it was already broken by the accused.

9. In our considered opinion, therefore, the trial Court has rightly held that the entire testimony of prosecutrix is conspicuously silent about the accused having sexual relations with her against her wish or with force and there could not be

any assurance of marriage when the prosecutrix was already a married woman knowing fully well the consequences of her act of having sexual relations with the accused and also knowing that even if accused gives such promise of marriage, she cannot marry him as it would be a void marriage.

10. In view thereof, it has to be held that the prosecution has failed to make out the essential ingredients, either of the offence punishable under Section 376 or under Section 420 of the IPC. The view taken by the trial Court being not only the possible and probable view, but the only view that can be taken from the evidence on record, no interference is warranted in the same. Consequently the appeal stands dismissed.

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