

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 306 OF 2016**

Rajesh Dosu Koli ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Udaysingh Desai for the Applicant

Mr. A. S. Shitole, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 26th JULY, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant has impugned the judgment and order dated 10th March, 2016 passed by the learned Sessions Judge, Greater Mumbai, by which, his application for discharge, came to be rejected. It appears from the prosecution case, that the prosecutrix and the applicant were residing in a chawl and were neighbours. She has stated that the applicant visited the residence to meet her brother during Dussehra. She has stated that their friendship developed into a love affair and they

started meeting each other often. According to the prosecutrix, in November, 2012, the applicant came to her house at around 3:30 p.m. and found that she was alone at home; that he chatted with her for some time and thereafter demanded sexual relations with her. She has stated that when she resisted the same, he disclosed to her that he was in love with her and that he was going to marry her, pursuant to which, they had physical relations. She has stated that thereafter, from November, 2012 to April, 2013, the applicant would visit her residence and have physical relations with her. She has further stated that in April, 2013, she realised that she was pregnant and disclosed the same to the applicant, who asked her to abort the child. She has stated that when she refused to abort the child, he assured her that he will marry her within one year and asked her to abort the child. She has stated that only as the applicant had promised to marry her, she aborted the child on 1st June, 2013. She has stated that thereafter, the applicant continued to have physical relations with her. She has further alleged that when she questioned the applicant about marriage, he started avoiding her and refused to take her call, pursuant to which, she disclosed the same to her family members. She has stated that when her brother and sister-in-law spoke to the applicant, it was evident that the applicant did not

want to marry the prosecutrix, pursuant to which, the aforesaid complaint was lodged.

3. Learned Counsel for the applicant submitted that the relations were consensual and that the prosecutrix was an adult and therefore, no offence as alleged was disclosed. He relied on the judgment of this Court rendered in the case of *Nandan Sadanand Bendarkar vs. State of Maharashtra* decided on 6th May, 2015 in Criminal Application No. 355 of 2014 and the decision of the Apex Court in the case of *Uday vs. State of Karnataka* decided on 19th February, 2003 in Appeal (Criminal) No. 336 of 1996.

4. Learned A.P.P opposed the application. He submitted that the statement of the prosecutrix shows that she was compelled to have physical relations with the applicant only on the assurance and promise that the applicant would marry her. He submitted that the statement of the prosecutrix is corroborated by the statements of other witnesses. He further submitted that the reliance place on these judgments is misplaced.

5. Perused the papers, in particular, the statement of the prosecutrix. The prosecutrix in her statement, has clearly stated that she was compelled to have physical relations with the applicant, as the applicant had promised to marry her. She has further stated that when she was pregnant, the applicant forced her to abort the pregnancy stating that he would marry her shortly and thereafter, refused to marry her. The judgment relied on by the learned Counsel for the applicant in the case of ***Uday vs. State of Karnataka (supra)*** is not applicable to the facts of this case, inasmuch as, the said judgment was rendered in appeal, after evidence was led and after the appellant therein, was convicted. As far as the judgment in the case of ***Nandan Sadanand Bendarkar vs. State of Maharashtra (supra)*** is concerned, it was clearly noted in para 19 of the said judgment as under :

“19. We have already held that the Applicant was serious in getting married to the Respondent. All the arrangements therefor were made. Unfortunately, the mutual plan got frustrated due to disagreement between them. By no stretch of imagination, it can be said that the Applicant's promise to marry the Complainant was fraudulent or dishonest and that too at the time of making the promise. Therefore, the offence punishable under section 420 of the Indian Penal Code, 1860 is also not disclosed.”

This is not the case in the present case. In the case of ***Nandan Sadanand Bendarkar vs. State of Maharashtra (supra)***, it appears that the applicant was serious in getting married and had made all the arrangements for the same. However, due to some disagreements, they could not get married and it is in those circumstances, that the Division Bench held that the applicant's promise to marry the complainant was not fraudulent or dishonest and that too at the time of making the promise.

6. In the facts of the present case, the statement of the prosecutrix clearly shows that the applicant had established physical relations with the prosecutrix on the assurance and promise that he would marry her and had even got her to abort the child.

7. Considering the material on record, no interference is warranted in the impugned judgment and order. Accordingly, the application is rejected.

8. It is made clear that the observations are *prima facie* for considering the aforesaid application and the learned trial Judge shall

decide the case on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.