

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application (APPA) NO. 291 OF 2017

The State of Maharashtra, thr. P.S.O, Gadchandur.
V/s
Ganesh Sakharam Chavan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.S. Nayak, APP for Applicant/State.

CORAM : KUM. INDIRA JAIN, J.

DATED : 01/11/2017

Heard Mr. R.S. Nayak, learned
Additional Public Prosecutor for State.
Respondent though duly served is absent.

By this application prosecution is
seeking leave to appeal against the judgment
and order dated 17/08/2016 passed by the
learned Additional Sessions Judge, Chandrapur
in Criminal Appeal No. 83/2011, allowing the
appeal and setting aside the order of
conviction passed by the learned Judicial
Magistrate First Class (Court No.3 Rajura) in
Summary Criminal Case No. 2963/2007. The
learned Magistrate convicted the respondent

for the offence punishable under section 354 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years with fine of Rs. 3000/- in default simple imprisonment for three months.

With the assistance of the learned Additional Public Prosecutor, this Court has perused the judgment of the courts below. It appears that the investigating officer was not examined by the prosecution during trial. The appellate Court came to the conclusion that non-examination of investigating officer was fatal to the prosecution case as omissions and contradictions could not be proved for want of evidence of investigating officer.

So far as the evidence of victim is concerned it can be seen *prima facie* that no vital omissions or contradictions could be elicited in the cross examination. The trial Court has elaborately discussed the evidence of victim and other witnesses. The allegations of outraging the modesty are by student against the teacher.

In view of the above this Court finds it a fit case to grant leave.

Hence the following order.

ORDER

- (i) Criminal application is allowed.
- (ii) Leave to appeal granted.
- (iii) Action under section 390 of Criminal Procedure Code.

Criminal appeal No. _____/2017

Heard.

Admit

Call for record and proceedings.

Notice to the respondent, returnable within four weeks.

JUDGE