

JPP

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

CRIMINAL APPLICATION NO. 184 OF 2017

IN

CRIMINAL APPEAL NO. OF 2017

Tara Dattatraya Tipale. ... Applicant/Appellant.

V/s.

Sarfraj Yakubali Sayyad & Ors. ... Respondents.

Mr. Rajas A. Naik for the Applicant/Appellant.

Mr. H.J. Dedhia, APP for the Respondent - State.

***CORAM : S.S. Shinde and
Mrs. Mridula Bhatkar, JJ.***

DATE : 5th October 2018.

P.C. :-

Heard the learned Counsel appearing for the Applicant and the learned APP for the State. The learned Counsel appearing for the Applicant submits that the evidence of the prosecutrix has not been properly considered by the Trial Court. It is deposed by her in her deposition that, Respondent no.1 has cheated her and under the pretext of promise to marry her, performed the sexual intercourse on

more than one occasion. It is submitted that, consent obtained by exercising deceit, cannot be legitimate defence to exculpate Respondent No.1 by the Trial Court. In support of aforesaid submissions, the learned Counsel for the Applicant placed reliance upon the exposition of law by the Supreme Court in the case of *Karthi Alias Karthick v/s. State represented by Inspector of Police, Tamil Nadu* reported in *2013(12) SCC 710*.

2. Though, Respondent No.1 is served, none appears for him. The learned APP submits that the learned Counsel for the Applicant is right in his submission, that the consent obtained by exercising deceit, cannot be considered as legitimate defence to exculpate the accused. Therefore, he submits that, this Court may favourably consider the prayer in the application.

3. Upon hearing the learned Counsel appearing for the Applicant and the learned APP for the State, and upon perusal of the findings recorded by the Trial Court and in particular, the evidence of the prosecutrix and keeping in view a judgment of the Supreme Court in the case of *Karthi alias Karthick* (supra) and in particular, paragraphs 13 and 14 thereof, the Applicant has made out the case to allow the

Application. The Trial Court has not appreciated the evidence of prosecutrix in its proper perspective. In the light of above, the Application is allowed and stands disposed of.

4. Registry to register the Appeal. Appeal admitted. On admission, the learned APP waives service for the state.

5. Action under Section 390 of Criminal Procedure Code be taken by the Sessions Court at Thane.

(Mrs. Mridula Bhatkar, J.)

(S.S. Shinde, J.)

Jyoti
Prakash
Pawar

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by Jyoti Prakash
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