

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

CRIMINAL APPLICATION NO. 54 OF 2017

Rukhsar Mohammed Rafique Momin ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

Mr. Rohan Surve for the Applicant.

Mr. V.V. Gangurde, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 07th MARCH, 2018

P.C.:

. This is an application under Section 378(3) of Cr.P.C. for leave to file Appeal against the Judgment and Order dated 25.11.2016 passed by the learned Additional Sessions Judge, Thane thereby acquitting the Respondent No.2 from offence punishable under Section 376 of the Indian Penal Code as against Respondent No.2 and under Section 417 read with Section 34 of the Indian Penal Code as against the Respondent Nos. 2 and 3.

2 It is the prosecution case that Respondent No.2 by giving promise to marry with the first informant, established physical relationship with her. The said affair was going on from 14.01.2014 till 02.02.2014, the day on which the younger brother of the first informant saw her in the house of the Respondent No.2. The record indicates that subsequently a Nikahnama was prepared by the

Respondent Nos.2 and 3. However, the Respondent No.2 subsequently resiled from the promise of marriage and therefore, the present crime was registered. After recording the evidence and hearing the parties thereto, the Trial Court acquitted the Respondents, predominantly on the ground that the conduct of the first informant reveals that she was a consenting party to the alleged act and the prosecution has failed to prove the ingredients of the offence under Section 376 and 417 of Indian Penal Code beyond all reasonable doubts.

3 After perusing the record, this Court is of the view that first informant was major when the offence was committed and was a consenting party to the said alleged offence under Section 376 of the Indian Penal Code. That, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the case. No case for grant of leave is made out.

4 Application is accordingly rejected.

(A.S.GADKARI, J.)