

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.399 OF 2017

(For Leave to Appeal - Private)

Swati Dattu Joshi ... Applicant

V/s.

Santosh Ramesh Sangle & Anr. ... Respondents

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Mr.P.R.Kalantri i/b. Mr.Harshad E. Palwe, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 18th JUNE 2018.

P.C. :

1 Though this matter is titled as Criminal Appeal, the
office has treated it as an application for grant of leave to appeal.

2 The application is filed by the complainant, who filed Regular Criminal Case No.126 of 2015 against the respondent herein/original accused and on the basis of Order passed by the learned Magistrate under Section 156(3) of the Criminal Procedure Code, the FIR came to be lodged against the present respondent No.1. Subsequently, charge-sheet came to be filed and

he was prosecuted for the offences punishable under Sections 376 and 420 of the Indian Penal Code. The trial ultimately ended in the acquittal of the respondent/accused, which is subject matter of challenge in the instant proceedings.

3 Heard the learned Advocate appearing for the applicant/original complainant. He vehemently argued that there was misconception of fact in the mind of complainant/P.W.No.1 which has resulted in submitting her body to the respondent/original accused and as such the offences alleged are made out against the respondent. The learned Advocate further argued that the respondent on oath has accepted this fact and therefore, the learned trial Court erred in acquitting the respondent/accused.

4 The learned Additional Public Prosecutor supported in the impugned Judgment and Order of acquittal.

5 I have carefully considered the rival submissions and also perused the entire record made available.

6 The complaint was lodged by the prosecutrix/P.W.No.1, who claimed to be victim of the crime in question. She is a married lady having one child from her husband named Dattu. Her cross-examination reveals that her marriage with Dattu is love

marriage and that marriage is still subsisting. In the wake of this factual position, crystallized from cross-examination of the alleged victim of the crime in question, it cannot be said that she submits her chastity to the respondent/accused by misconception of fact believing that the promise given by him to marry her would be materialized. Similarly, considering the fact that the prosecutrix was an adult married lady aged about 29 years having subsisting marriage, it cannot be said that alleged sexual intercourse by the respondent with her was without her consent and against her will. Her evidence does not disclose this fact but indicates consensual sex between two adult persons.

7 In this view of the matter, neither the offence punishable under Section 376 nor the one punishable under Section 420 of the Indian Penal Code, could be established by the evidence adduced by the prosecuting agency. The impugned Judgment and Order of acquittal, as such, is perfectly in consonance with the evidence placed on record before the learned trial Court.

8 The application, as such, is devoid of merit and, therefore, rejected.

(A.M.BADAR J.)