

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

CRIMINAL APPLICATION (APPA) NO. 752 OF 2021
AND
CRIMINAL APPEAL NO. 395 OF 2022

Geeta D/o Hanumantrao Borkar,
..VS..
The State of Maharashtra & Another

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

Court's or Judge's orders

Mr. H.V. Dhage, Advocate for the Applicant/Appellant.
Mr. M.J. Khan, Additional Public Prosecutor for Respondent No.1.

CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

DATED : 29.06.2022

CRIMINAL APPLICATION (APPA) NO. 752/2021

Heard.

2. Leave to file Appeal is granted in view of the law declared by the Apex Court in the case of *Mallikarjun Kodagali (dead) Represented through Legal Representatives Vs. State of Karnataka & Others, (2019) 2 SCC 752.*

3. Appeal be registered accordingly.

CRIMINAL APPEAL NO. 395 OF 2022

Heard.

2. Mr. Hariom Dhage, learned counsel for the Appellant, submits that the impugned judgment delivered by the Extra Joint Additional Sessions Judge, Amravati on 24.09.2021, thereby acquitting the Respondent No.2 for an offence punishable under Sections 376(2)(n) read with Section 417 of the Indian Penal Code with which the Respondent No.2 was charged, is perverse and not sustainable in law. He further submits that the learned Additional Sessions Judge has not taken into consideration the fact that there was no consent in law on the part of the prosecutrix/appellant and, therefore, the offences of cheating as well as rape were duly established and yet the learned Additional Sessions Judge found the Respondent No.2 to be innocent.

3. Mr. M.J. Khan, learned Additional Public Prosecutor submits that an appropriate order may be passed in the matter.

4. It is an admitted fact that the First Information Report has been lodged by the prosecutrix/appellant on 08.06.2018 and it is also an admitted fact that the first sexual encounter she had had with Respondent No.2 was sometime in the year 2015-2017. The allegation is that the prosecutrix/appellant was induced into having

sexual relations with the Respondent No.2, because the Respondent No.2 promised to her that he would perform marriage with her, which promise he did not keep later on. But, the facts remain that it were the prosecutrix/appellant who had refused to perform marriage with Respondent No.2, which fact has clearly appeared in the evidence of the prosecution. If this would only show that the entire fault for not enabling the Respondent No.2 to fulfill his promise lay with the prosecutrix/appellant and if this is so, the Respondent No.2 could not have been found, by any stretch of imagination, as guilty of the offence of rape. This is not a case of the consent having been given under misconception of fact rather this is a case wherein consent has been given fully knowing the consequence of the conduct of the parties. Thus, neither any perversity nor any impossibility nor any patent illegality could be noticed in the impugned judgment and order. The Appeal deserves to be summarily dismissed and it is dismissed accordingly.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Kirtak