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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 774 OF 2015**

Shri Abhijit Baswant NigudkarApplicant.
V/s
The State of Maharashtra and Ors. Respondents.

Mr. Amol A. Patankar @ Vatsal Thakkar for the Appellant.
Mr. A.R. Kapadnis, APP for the Respondent-State

**CORAM: NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

**Order reserved on : 23/02/2023.
Order pronounced on: 05/06/2023**

P.C.:-

1] Based on the complaint dated 7/4/2015 lodged by Respondent No.2-complainant, Crime No.177 of 2015 punishable under Section 354C of the Indian Penal Code came to be registered against the Applicant.

2] Applicant claims to be working as Zonal Head, whereas Respondent No.2-complainant was working as Deputy Sales Manager, Corporate Sales with Max Life Insurance Company.

3] Allegation by Respondent No.2 in the FIR is, on 14/11/2014 at the time of attending meeting at Borivali Office, present Applicant, instead of having eye to eye contact with Respondent No.2-complainant during discussion, had stared at the breasts of the complainant which made her restless. She has lodged complaint about the aforesaid conduct which has resulted into Applicant ill-treating Respondent No.2-complainant.

4] Counsel for the Applicant by inviting attention of this Court to the contents in the complaint would urge that very ingredients for attracting offence under Section 354C Voyeurism cannot be inferred from the contents of the FIR. According to him, offence can be lodged in case if a person watches, or captures the image of a woman engaging in a private act where she shall have expectation of not being observed. So as to substantiate his contention, he would invite attention of this Court to Explanation-1 which defines “private act” which includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or

covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public. According to Mr. Patankar, offence allegedly had taken place in the Office of the Applicant which cannot be termed as a place wherein during private act, Applicant allegedly watched or stared at the breasts of the complainant-victim. As such, he would urge that the very offence is not made out.

5] Learned APP would submit that though served none appears for Respondent No.2 and this Court should issue fresh notice to Respondent No.2 for taking up proceedings for final disposal at the admission stage. According to him, satisfaction of the ingredients can be inferred from the contents of the FIR/complaint.

6] We have appreciated the aforesaid submissions.

7] Even if contents in the FIR are taken to be true at its face value still facts remains that incident has occurred in the premises of the Office of the Max Life Insurance Company where both Applicant and

Respondent No.2-complainant were working.

8] It is not the case that the victim was engaged in private act when she was stared at by the Applicant particularly at her breasts. As such, there appears to be substance in the submissions of Counsel for the Applicant.

9] Hence, **admit.**

10] In view of the aforesaid submissions, we deem it appropriate to stay further prosecution against the Applicant initiated pursuant to C.R. No.177 of 2015 for the offence punishable under Section 354C of the Indian Penal Code.

11] Learned APP waives service of notice on behalf of Respondent No.1.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]