

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 4649 OF 2015

Parmeshwar s/o Fakir Kale

... Applicant

VERSUS

The State of Maharashtra

... Respondent

.....
Mr S. S. Panale, Advocate for the applicant
Mrs M. S. Patni, APP for respondent/State
.....

CORAM : **N. W. SAMBRE, J.**
DATE : **28TH SEPTEMBER, 2015.**

PER COURT:

. The applicant herein is facing trial for offences punishable u/s 363, 366, 376(2)(i)(n), 506 of the Indian Penal Code and u/s Section 6 of the Protection of Children from Sexual Offences Act.

2. During the time of recording of evidence, the applicant herein had moved an application seeking re-summoning of the prosecutrix for her further cross-examination in exercise of powers u/s 311 of the Code of Criminal Procedure, which came to be rejected by III Additional Sessions Judge, Latur, on 17th August, 2015. As such, present application.

3. Mr S. S. Panale, learned Counsel for the applicant, would urge that the object of right provided u/s 311 of Cr.P.C. to a party is to assist the Court in arriving at a truth irrespective of the fact that the prosecution or the defence has failed to produce any evidence which is necessary for just and proper disposal. In support of his contention, he has relied upon the judgment of the Hon'ble Apex Court in the matter of **Manna Sk and Ors v. State of W. B. and Anr.** reported in **AIR 2014 SC 2950**.

4. Ld. APP while opposing the above referred submissions has invited my attention to the observations made by the Id. Sessions Judge in the order impugned dt. 17th August, 2015. According to her, the applicant-accused has already exhausted his right to cross-examine the prosecutrix and now he has sought re-summoning of the prosecutrix for further cross-examination so as to fill in the lacunae and sought rejection of the present application.

5. Having considered the submissions made by Mr Panale, learned Counsel for the applicant and learned APP, it is noticed that the learned Sessions Court while rejecting the application has noted

that the prosecutrix was subjected to detailed cross-examination by the Advocate of the accused. The defence has examined in all 4 witnesses and the application is sought to be based on the new set of facts which were sought to be canvassed in the form of defence. The Id. Sessions Court then while confronting with the factual matrix of the case has noted that, no new facts could be noticed in the matter and the summoning of the prosecutrix for further cross-examination is nothing but an intention to fill in the lacunae.

6. In my opinion, the reasons furnished by the learned Sessions Court while rejecting the application particularly in the background of the conduct of the present applicant of subjecting the prosecutrix to further cross-examination does not call for any interference in exercise of powers u/s 311 of Cr.P.C. It is also required to be taken note of the fact that, no case could be established before this Court by the applicant/accused so as to substantiate the contention for further cross-examination of the prosecutrix is must for just and proper disposal of the case. It is noted that the cross-examination of the prosecutrix is sought purely with an intention to fill in the lacunae and as such, the Court, in my opinion, was right in rejecting the application.

7. As such, the present application fails and same stands rejected. No costs.

[N. W. SAMBRE, J.]

sgp