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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINIAL APPLICATION NO.4735/2012

IN

CRIMINAL APPEAL NO.117/2012

Prakash @ Jaywant Vasudeo Wankhede,
age 63 yrs., occu.
r/o Laxmi Alankar Gruh,
Saraf Bazar, Main Road,
Sakri, Tq.Sakri Dist.Dhule.

...Applicant..

Versus

The State of Maharashtra.

...Respondent...

.....

Shri R.N. Dhorde, Senior Advocate i/b Shri V.R. Dhorde,
Advocate for applicant.

Shri S.G. Karlekar, APP for respondent – State.

Shri R.S. Deshmukh, Advocate for appellant in Criminal
Appeal No. 142 of 2012.

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**CORAM: S.S. SHINDE &
A.M. BADAR, JJ.**

ORDER RESERVED ON : 06.01.2015

ORDER PRONOUNCED ON : 13.01.2015

ORDER : (Per A.M. Badar, J.)

1] This is an application by appellant/accused
under Section 391 of the Code of Criminal Procedure, 1973
(Cr.P.C. for the sake of brevity) for recording of
additional evidence of Sonali Manoj Deore - mother of the

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minor girl - an alleged victim of sexual abuse and Sunanda Suresh Deore - paternal grandmother of alleged victim as well as for further cross-examination of PW-10 - the alleged minor victim of sexual abuse. The applicant/accused is father of Sonali Deore and grandfather of the minor girl alleged to be victim of sexual abuse by him. Keeping in mind social object of preventing social victimization of the victim and the object of Section 228-A of the Indian Penal Code, 1860, we consider it appropriate not to give name of the victim. Rather we intend to describe her as minor victim girl. At the request of the learned counsel for the applicant/accused, the application is taken up for hearing prior to final hearing of the appeal.

2] The FIR lodged on 25.8.2009 by PW-7 Major Suresh Deore - son in law, has resulted in prosecution of the applicant/accused for the offences punishable under Sections 376, 376 read with Section 511 and 506 of Indian Penal Code 1860(IPC for the sake of brevity) vide Sessions Case No. 160 of 2010. After trial, the learned Additional Sessions Judge, Dhule, by impugned judgment

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and order dated 18.2.2012 has been pleased to convict the applicant/accused of the offences punishable under Sections 376 r/w. 511 and 506 of the IPC. The applicant/accused came to be acquitted of the offence punishable under Section 376 of the IPC.

3] Shri Dhorde, learned Senior Counsel appearing for the applicant/accused, after pointing out the relevant dates coming on record from the evidence of informant – PW-7 – Manoj Deore, contended that the minor victim girl was having tons of opportunity to disclose the incident to her own mother – Sonali Deore. He further argued that the mother is most natural witness in such case and as the alleged victim girl stayed with her grandmother – Sunanda Deore, evidence of said Sunanda ought to have been recorded by the learned trial court. According to the learned Senior Counsel, the Investigating Officer has recorded statement of both these witnesses under Section 161 of the Cr.P.C. However, the prosecution has failed to examine these witnesses and thereby, prejudice is caused to the applicant/accused. According to the learned Senior

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Counsel, there used to be constant quarrels between informant Manoj and his wife Sonali and because of this matrimonial discord, the applicant/accused is roped in a false case after procuring the medical evidence. The applicant/accused is deprived of fair trial due to non-examination of these material witnesses by the prosecution. Placing his reliance on **Sudevanand Vs. State through CBI reported in (2012) 3 SCC 387**, Shri Dhorde, learned senior counsel submitted that delay in filing an application under Section 391 of Cr.P.C. does not come in way of entertaining the same.

4] Per contra, the learned APP as well as Shri Deshmukh, the learned counsel appearing for the alleged minor victim of sexual abuse contended that there is no necessity to record additional evidence and the averments made in the application are totally incorrect.

5] The averments made in the instant application are to the effect that the applicant/accused was in jail during trial and, therefore, he could not impart proper instructions to the Advocate, who defended him in the

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trial. The applicant/accused was unaware of his right and there was much less time with him to instruct the learned defence counsel. It is further averred in the application that whenever the applicant/accused used to be produced from jail before the Sessions Court, he used to give instructions. It is further averred that due to oversight or inadvertence, the learned defence counsel has not taken any steps to call Sonali and Sunanda Deore as defence witnesses before the learned trial court. Their evidence is important to arrive at just decision of the present case, as PW-1 the minor victim girl has disclosed that she has narrated the incident to her mother Sonali and grandmother Sunanda. According to the applicant/accused, some important questions remain to be asked to the minor girl alleged to be the victim of sexual abuse.

6] At this stage, it needs to be kept in mind that the law regarding appreciation of evidence in cases of sexual offences and particularly in respect of minor girl is set out by catena of judgments of the Honourable Supreme Court. It is well settled that the Court should

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examine broader probabilities of the case and not get swayed by minor contractions or insignificant discrepancies in evidence of witnesses. It is well settled that if evidence of prosecutrix inspires confidence then it can be relied upon without seeking further corroboration to her statement and if for some reason the court finds it difficult to place implicit reliance on such testimony of the prosecutrix, it may look at other evidence. The very nature of offence in such cases, makes it difficult to get direct corroborative evidence. The victim of sexual offence is at a higher pedestal than the injured witnesses because she is subjected to physical, psychological as well as emotional injury. Such offence is a crime against the entire society and it violates the victim's most cherished fundamental right i.e. right to life contained in Article 21 of the Constitution of India, 1950. As such, it needs to be kept in mind that the trial court is required to be alive to its responsibility and has to be sensitive while dealing with the cases involving sexual molestation and, particularly, that of a minor girl. We have noted these principles and parameters as one of the

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contentions is that the accused did not get fair trial.

7] We have set out these principles for assessing the evidence in the cases of sexual offences particularly against minor girls also because Section 391 of the Cr.P.C. which is sought to be invoked by the applicant/accused mandates that the additional evidence can be recorded only if the appellate court thinks it to be necessary to have the same for arriving at just conclusion. Necessity to record such additional evidence is dependent upon fact situation of each matter having due regard to the concept of fair play and justice as well as wellbeing of the society. No straight-jacket formula can be evolved for the same.

8] At this juncture, it is apposite to reproduce Section 391 of the Cr.P.C. for better understanding of the matter. It reads thus :-

“391. Appellate Court may take further evidence or direct it to be taken :-

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks

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additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

9] Scope and ambit of provisions of Section 391 of Cr.P.C. is aptly elaborated by the Honourable Apex Court in the matter of " **Ashok Tshering Bhutia Vs. State of Sikkim**" (2011) 4 SCC 402, which is relied upon by both the parties. Ratio of the said ruling can be found in para Nos. 28 to 32 of the said judgment and they read thus :-

“28. Additional evidence at the appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity.

29. The primary object of the provisions of Section 391 Cr.P.C. is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary. [*Vide Rajeswar Pasad Misra v. State of W.B., Ratilal Bhanji Mithani v. State of Maharashtra, Rambhau v. State of Maharashtra, Anil Sharma v. State of Jharkhand, Zahira Habibulla H. Sheikh v. State of Gujarat and Manu Sharma v. State (NCT of Delhi).*]

30. This court in *State of Gujarat v. Mohanlal Jitmalji Porwal* dealing with the issue held as under : (SCC pp. 370-71, para 5)

“5... To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender.

Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a *persona non grata* whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the movement upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

31. In *Rambhau*, a larger Bench of this Court held as under. (SCC 762, para 4)

"4. Incidentally, Section 391 forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and the *Powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice*. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 *since the same avoids a de novo trial. It is not to fill up the lacuna*

but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the Civil Procedure Code."

32. In view of the above, the law on the point can be summarized to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents, etc. just to meet the ends of justice. However, the provisions of Section 391 Cr.P.C. cannot be pressed into service in order to fill up lacunae in the prosecution case."

10] It is thus clear that the provisions of Section 391 cannot be invoked when the party concerned has fair opportunity and has not availed of it. Such provision is to be used in exceptional circumstances in order to arrive at just conclusion to meet the ends of justice.

11] Shri Dhorde, learned Senior counsel has drawn our attention to the ruling in the matter of "*Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others*" reported in AIR 2004 SC 3114, wherein, it is held by the Honourable Apex Court that denial of fair trial is as much injustice to the accused as is to the victim of the society. It is further held that fair trial

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obviously would mean trial before an impartial judge, a fair prosecution and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accuses, witnesses or the cause which is being tried is eliminated. It is further held therein that in such matters failure to hear material witnesses is certainly denial of fair trial.

12] The Honourable Apex Court in the matter of **Zahira** (supra) had an occasion to consider provisions of Section 391 of the Cr.P.C. and it is held therein that the legislative intent in enacting Section 391 of Cr.P.C. appears to be empowerment of the appellate court to see that justice is done between the prosecution and the person prosecuted and if the appellate court finds that certain evidence is necessary in order to enable it to give a correct and proper finding, it would be justified in taking action under Section 391.

13] It is thus clear that the provisions of Section 391 of Cr.P.C. are meant for sub-serving the ends of justice and can be called in aid if the appellate court

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finds that recording of additional evidence is essential in order to secure the ends of justice by recording accurate finding. Same is the ratio of ruling in the matter of State of Maharashtra Vs. Vasant Shankar Masne and another (1993) Cr.L.J. 1134, relied upon by Shri Dhorde, the learned Senior Counsel.

14] Keeping in view these guiding principles of law, let us examine the case in hand in order to ascertain whether recording of additional evidence of Sunanda and Sonali Deore as well as subjecting the minor victim girl for further cross-examination is necessary to arrive at just conclusion in the case in hand.

15] It is the case of the prosecution that the minor victim of the alleged offence is a girl aged about 6 years. She is daughter of informant PW-7 Manoj Deore, a Clerk in the office of Court of Metropolitan Magistrate residing in Government Quarter at Bandra alongwith his wife Sonali Deore. Sunanda is the mother of informant PW-7 Manoj and she used to reside at Nasik. Parents of Sonali Deore are staying at Sakri in Dhule District. On

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20.4.2009, there was marriage of Kamlesh – brother of Sonali at Sakri. Sonali alongwith her minor daughter – alleged victim of sexual offence, went to the house of Prakash Wankhede (Applicant/accused) on 15.4.2009 for attending marriage ceremony. They stayed at the house of the applicant/accused till 3.5.2009. According to the prosecution case, during this period, the applicant/accused who is maternal grandfather of the minor victim girl, used to take her in his room and make her sleep with him. According to prosecution case, the applicant/accused used to remove her clothes, insert his finger in her vagina, used to apply his semen on her private part and used to smell her genitals. It is also the case of the prosecution that the applicant/accused used to commit rape on the minor victim girl during her stay at his house at Sakri, District Dhule and he used to threaten her that she would be killed by hanging to the fan, if the incident is disclosed to anybody. Because of sexual abuse and threats given by applicant/accused, the minor victim girl, as per the prosecution case, has suffered tremendous mental and psychological trauma and did not disclose her ordeal to anybody. Ultimately, she

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accompanied by her mother Sonali, went to Nasik at parental house of PW-7 Manoj Deore, where, Sunanda used to reside. It is the case of the prosecution that on return from Sakri, the minor victim girl after taking a long time ultimately, disclosed the incident in question to her maternal grandmother Sunanda Deore on or about 6.6.2009. Then, Sunanda disclosed the same to her son PW-7 Manoj, who, immediately rushed to Nasik on 7.6.2009. Thereafter, accompanied by her maternal grandmother Sunanda, the minor victim girl returned to her house at Bandra on 11.6.2009. She was under psychological and emotional trauma and ultimately, after much efforts, she disclosed the incident to her father PW-7-Manoj on 20.6.2009. Thereafter, according to prosecution case, the minor victim girl was taken to the Psychiatrist as well as Doctors. Her mother, Sonali who had returned to her parental house at Sakri from Nasik immediately after 3.5.2009; has thereafter returned to her matrimonial house at Bandra on 22.7.2009. According to the prosecution case, as reflected from statement under Section 161 of Cr.P.C. of Sonali Manoj Deore, she was not in company of the minor victim girl from 3.5.2009 to

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22.7.2009 as said minor victim girl was left at the house of Sunanda Deore - paternal grandmother at Nasik.

16] Keeping in mind these facts borne from the statement of Sunanda Suresh Deore and Sonali Manoj Deore recorded u/s 161 of the Cr.P.C. coupled with evidence of PW 7 Manoj Suresh Deore, let us examine whether at this stage, recording of additional evidence of Sunanda Suresh Deore, Sonali Manoj Deore as well as subjecting minor victim girl to further cross-examination is necessary. The prosecution in all examined 12 witnesses in order to establish the guilt of the applicant-accused. The prosecution witnesses and the purpose of examining them can be summarized thus :-

Sr. No	Witness	Purpose of examination
1	PW1 - Dr.Chetan Ashok Pawar, Lecturer in SBH Government Medical College, Dhule.	Both these witnesses i.e. PW1 & PW2 examined the minor victim girl on 26.8.2009, heard history of sexual assault from her, examined her medically and found her hymen ruptured. They issued medico legal certificate.
2	PW2 - Dr.Ajay Gajanan Pathak, Associate Professor, Forensic Science, SBH Government Medical College, Dhule.	

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3	PW3 – Dr.Suhas Sadashiv Sonawane, Medical Officer, Rural Hospital, Sakri.	He examined the applicant-accused on 3.9.2009, found him fit for sexual intercourse and collected his semen.
4	PW4 – Dr.Manoj Laxman Bhatawadekar, M.D., Consulting Psychiatrist, Mumbai	On 29.6.2009, this witness interviewed Pooja. She narrated the incident happened during her stay at Sakri. This witness referred the minor victim to Dr.Meenal Sule, Clinical Psychologist.
5	PW5 – Dr.Meenal Anil Sule, Clinical Psychiatrist, Mumbai	This witness examined the minor victim girl on 29.6.2009, conducted test and heard the narrations of the minor victim girl about the incident.
6	PW6 – Dr.Purnima Kakotkar, Professor, GS Medical College and Wadia Hospital, Mumbai.	In August, 2009, this witness examined the minor victim girl and recorded the history narrated by her. She issued medico legal certificate (Exh.61) stating old penetrative injury to hymen of the minor victim girl.
7	PW7 – Manoj Suresh Deore - Father	He is informant – father, who lodged FIR (Exh.67)
8	PW8 – Dr.Anshu Kulkarni, Consulting Psychiatrist, Mumbai.	This witness examined the minor victim girl on 31.7.2009 and proved note of examination recorded by her.
9	PW9 – Jayendra Rajaram Kumbhar,	Investigating officer

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	PSI	who recorded the statement of the minor victim girl and her father PW 7 Manoj.
10	PW10 – minor victim girl, aged 6 years.	Her evidence came to be recorded after ascertaining her competency to depose by the learned Additional Sessions Judge.
11	PW11 – Seema Surendrapalsing Parihar, PSI, Counseling Wing of CID, Mumbai.	The minor victim girl was taken to her on 20.7.2009 by her father and grandmother Sunanda. This witness heard the narrations of minor victim girl about the incident. On 29.7.2009, Sonali Deore, PW 7 Manoj and minor victim girl again went to this witness.
12	PW12 – Suresh Malwal, PSI / IO, Sakri Police Station.	He investigated the crime in question.

17] Record of the trial court shows that during the course of recording of evidence of prosecution, the learned Special Public Prosecutor passed a Pursis (Exh.75) on 2.1.2012 giving up prosecution witness Sonali Manoj Deore by stating that she may not support the prosecution case and she is residing with applicant – accused. Thereafter, on 30.1.2012, the learned Special

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Public Prosecutor passed a Pursis (Exh.82) giving up prosecution witness Sunanda Suresh Deore by stating that she is not being examined as her evidence is repetition of the facts disclosed by other witnesses. It is thus clear that to the knowledge of the applicant / accused and the learned defence counsel, the learned Special Public Prosecutor has given up Sunanda Suresh Deore and Sonali Manoj Deore, who were cited as prosecution witnesses.

18] Scrutiny of evidence of prosecution thus makes it clear that minor victim has disclosed the alleged incident of sexual assault on her to her father as well as to the several witnesses examined by the prosecution including medical witnesses and the Police Officer. Narrating of the incident by the minor girl PW-10 to PW-4 Dr. Manoj Bhatwadekar and PW-5 Meenal Sule was on 29.6.2009 i.e. much before returning of her mother Sonali to her matrimonial home at Bandra on 22.7.2009. According to Shri Dhorde, the learned counsel for the applicant, Sonali Deore and Sunanda Deore are material witnesses. As discussed in foregoing paragraph, Police

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statement of Sonali Deore – mother shows that the minor victim has not disclosed the alleged incident to her at any point of time. In fact, her Police statements make it clear that she was not with the minor victim from 3.5.2009 to 22.7.2009. The defence can very well point out that evidence of PW-10 minor victim girl cannot be relied upon for want of corroboration due to non-examination of her mother Sonali. No doubt, the alleged incident was disclosed by minor victim to her paternal grandmother Sunanda Deore on 6.6.2009 who in turn disclosed the same to her son PW7 Manoj Deore on 7.6.2009. Even if the prosecution has decided to examine Sunanda Suresh Deore, then her evidence would have been material just in order to prove former statement of the minor victim as per the provision of Section 157 of the Indian Evidence Act, which reads thus:-

"157. Former statements of witness may be proved to corroborate later testimony as to same fact :

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

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Such evidence would have been relevant in order to corroborate the testimony of minor victim. We have seen from record that several witnesses have already been examined by the prosecution in order to prove her former statement. What weight is required to be given to their evidence is totally different aspect and the same cannot be decided at this stage. Exercising his discretion, the learned Special Public Prosecutor has passed a Pursis (Exh.82) to the effect that he does not wish to examine Sunanda Suresh Deore in order to avoid repetition of evidence. In similar way, the learned Special Public Prosecutor has found that as Sonali Deore is not going to support the prosecution case. Therefore, he has given up the said witness. At this juncture, it needs to be kept in mind that for proof of a fact, no particular number of witnesses is required. What matters is the quality and not the quantity. Section 134 of the Indian Evidence Act, 1872 is explicitly clear and enunciates time honoured rule of appreciation of evidence that evidence is required to be weighed and not counted.

19] After closure of evidence of prosecution, record

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shows that the learned Additional Sessions Judge has asked the accused to enter upon defence by strictly complying the provisions of Section 233 of the Code of Criminal Procedure, 1973. The applicant/accused was specifically asked while recording his statement u/s 313 of the Code of Criminal Procedure, 1973 as to whether he wants to adduce his evidence on oath or whether he desires to adduce evidence in his defence. The applicant-accused has declined to enter in defence and has chosen not to avail this opportunity by examining any defence witnesses. Thus, the applicant accused had been given a fair opportunity to enter upon defence, but he has chosen not to avail the same. As such, by no stretch of imagination it can be said that fair trial was denied to the applicant/accused who was being defended by the learned defence counsel of his choice. Provisions of Section 391 of the Code of Criminal Procedure as such cannot be invoked as a disguise for a re-trial in such a case after not availing an opportunity to enter upon defence as seen from the verdict of the Hon'ble Apex Court in the matter of *Rambhau & another V/s State of Maharashtra* reported at **(2001) 4 SCC 759**.

20] So far as the contention of the applicant reflected in paragraph no.5 of the application to the effect that he could not give proper instructions to his Advocate as he was in jail during trial is concerned; the same is noted for rejection. It is contended by the applicant - accused that he used to instruct the defence counsel when he used to be brought in the Court from jail. This plea is totally incorrect. It is seen from the record that the applicant - accused was released on bail on 8.12.2009 and he was on bail throughout the trial. Operative part of the judgment and order dated 18.2.2012 of the learned Additional Sessions Judge shows that the applicant - accused was in custody only from 15.11.2009 to 9.12.2009. Thereafter, due to his release on bail, he was not an under-trial prisoner. As such he cannot be heard to say that because he was in jail, he could not impart proper instructions to the learned defence counsel. The trial continued thereafter for more than two years. The appellant/accused was having every opportunity to instruct his counsel during this period. There was ample time for the defence to deal with each

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and every aspect of the prosecution and infact the defence availed that opportunity by thoroughly cross-examining each and every prosecution witness to discredit them. Similarly, contention of the applicant – accused that the learned trial Court has conducted the trial in a mechanical manner and he could not get opportunity of fair trial is not finding support from the record of the trial Court. On going through the record of the learned trial Court, we have seen that the learned trial Court has taken all precaution and has shown sensitivity while conducting the trial. Even the evidence of minor victim PW 10 came to be recorded after examining her competency to testify in terms of provisions of Section 118 of the Indian Evidence Act by putting her some preliminary questions in order to understand whether she is in a position to give rational answers to those questions because of her tender age. The applicant – accused was given every opportunity in terms of mandatory provisions of Section 233 of the Code of Criminal Procedure for adducing defence evidence. As such it cannot be said that the learned trial Judge was a mute spectator during the on-going trial. It is seen that the learned trial

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Court has kept a balance and has not unduly trespassed upon function of either the learned Special Public Prosecutor or the learned defence counsel.

21] Shri Dhorde, learned Senior counsel has rightly pointed out that married life of PW-7 – Manoj is facing rough weather. This fact is also revealed from cross-examination of PW-7 Manoj. He was facing maintenance proceeding filed by Sonali , so also, the proceeding under Protection of Women from Domestic Violence Act, 2005. P.W.7 – Manoj was facing criminal complaint lodged by Sonali in the court of J.M.F.C., Sakri. However, no overbearing importance can be given to this aspect as at the relevant period, the couple was residing together. As seen from evidence of PW-7 – Manoj, his wife and minor daughter went to Sakri from his house and both of them returned to him albeit at different time. Bickering in married life of PW-7 Manoj could have been brought on record by examining his wife Sonali but evidence of PW-7 Manoj is already there on record to establish this fact.

22] The averment that some important questions were

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remained to be asked to the minor victim also leads us nowhere. In fact, the minor prosecutrix as well as all prosecution witnesses were thoroughly cross-examined by the learned defence counsel, as seen from the record. It is not pointed out as to on what point further cross-examination of the minor victim is necessary.

23] Examining the contentions raised by the applicant/accused from all angles, we are of the considered opinion that the applicant/accused has not made out any exceptional case warranting recording of additional evidence so as to meet the ends of justice. At this stage, it cannot be said that with available ocular and documentary evidence on record, it is impossible to pronounce judgment. Having gone through the entire record of Sessions Case NO.160/2010 and after giving anxious consideration to the contentions of the applicant-accused, at this stage we do not find that there is any need to record any additional evidence in order to come to a correct and proper finding and, therefore, the action u/s 391 of the Code of Criminal Procedure is not warranted. We make it clear that delay

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in lodging the instant application did not weigh in our mind for rejecting the same.

24] In the result, instant criminal application is rejected.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)