

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALS] NO.136 OF 2014

The State of Maharashtra	..Applicant
<i>Versus</i>	
Amol Mohan Kalsait	..Respondent

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Mrs. Anamika Malhotra, APP, for the Applicant – State.
Mr. Milind Deshmukh, Advocate for the Respondent.

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CORAM : A. R. JOSHI, J.

DATE : 10th JUNE, 2015

P.C.

1. Heard learned APP for the State.
2. This is an application for leave to file appeal challenging the judgment and order of acquittal passed by the Special Judge, Satara on 29th March, 2014 thereby acquitting the respondent/accused for the offence punishable under Section 11(iii) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012.
3. Brief facts of the case are that on 19.2.2013 when two victim minor girls, then aged about 13 and 12 years, were at the house of the victim girl No.1, present respondent/accused

showed some obscene photographs/pictures to those girls taking advantage that the girls were alone in the house as their parents had gone elsewhere and he had secured entry in the house for fixing the ceiling fan in the house. After this incident of showing obscene pictures to the minor girls, the respondent went away after his work. In the evening when the parents came, the girls narrated the incident to them. Thereafter the incident was also narrated to the parents of victim girl No.2. However, no action was taken by the parents and the complaint was lodged at Phaltan police station only on 8.3.2013 i.e. after about 17 days. On 10.3.2013 the present respondent/accused was arrested and allegedly he made a disclosure statement and showed the photographs and they were taken charge of under panchnama.

4. At this juncture it must be mentioned that both the panchas did not support the case of the prosecution and they turned hostile. This aspect was dealt much in detail by the trial Court while discussing the evidence of the prosecution whether sufficient to establish the offence against the accused.

5. During the investigation two minor girls were

examined. Their parents were also examined. The panch witnesses regarding seizure of photographs were also examined. What influenced the trial Court was the variance in the substantive evidence of the minor girls inasmuch as what was shown to the girls by the accused whether the photographs or newspaper pictures or any printed material. The trial Court was also influenced by the factual position that both the panchas turned hostile and did not support the case of prosecution and in fact panch witness (PW-2) was the tea-vendor doing his job just near the police station where the offence was lodged. It was also observed by the trial Court that according to the witnesses there were about more than 10 to 15 photographs shown to the girls. However, under the panchnama only four photographs were produced before the Court and that also with the substantive evidence of panch witnesses not supporting the case of prosecution. What mainly influenced the trial Court was the delay in lodging the FIR in such a serious offence and as such considering the delay of 17 days, the trial Court came to the conclusion as to non-establishment of the case against the accused.

6. In the opinion of this Court, considering the reasoning given by the trial Court and the effect of the substantive evidence, it cannot be said that the order of the trial Court is of such a perverse nature as is required to be interfered with in appeal. There is nothing to reagitate the matter considering the specific factual position in the case and as such there is no substance in the present application for leave to file appeal and accordingly the same is dismissed and disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)