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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 233 OF 2015**

Dr. Yojana Vilas Rawal ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Niranjana Mundargi for the applicant.

Smt. V.S. Mhaispurkar, A.P.P. for State.

**CORAM : M.L. TAHALIYANI, J.
DATED : APRIL 18, 2015**

P.C.

Admit. Heard finally.

2. Heard learned counsel for the applicant and learned A.P.P. for the respondent.

3. The applicant stands convicted for various offences punishable under Section 5, 6, 23 and 25 and Rule 9, 10 and 17 of Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 by the Magistrate and the appeal is pending before the Sessions Court at Islampur. During the pendency of the appeal, there were two applications filed under section 391 for recording further evidence. Both of them have been rejected on the

ground that the applicant/appellant wanted to fill up lacunae in his case. In my opinion, this view should not have been expressed by the learned appellate court so long as the appeal was pending. The proper course open in such situation was to hear the appeal finally and allow the applicant to agitate the issue with regard to recording of evidence under section 391 during the course of arguments. If the learned appellate court finds substance in the arguments and feels that further evidence will be necessary for just and proper decision of the appeal, he may record further evidence himself or may direct the trial court to record further evidence and certify the same to the appellate court. In my opinion, it was not necessary for the learned appellate court to pass such lengthy order at this stage.

4. The order passed by the learned Additional Sessions Judge is set aside. Learned Additional Sessions Judge is directed to hear the appeal and permit the applicant to make submissions with regard to recording of further evidence and take necessary steps for recording further evidence, if he finds substance in the prayer of the applicant. This application stands disposed of.

(JUDGE)