

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2268 OF 2015

Shri Pravin alias Pappu Kundalik
Thorat

... Petitioner

Versus

The State of Maharashtra

...Respondent

.....

Mr. Vilas B. Tapkir for the Petitioner.

Mr. Rajesh More, APP for the Respondent -State.

CORAM:-M.L. TAHALIYANI, J.

DATED : - 16th JUNE, 2015.

P.C.

Admitted. Heard finally.

2. Heard learned Advocate for the Petitioner and learned APP for the Respondent -State.

3. The Petitioner is facing trial for the offence punishable under section 376 of the IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the Act”). PW-1 is the victim. She has been examined. She was partly cross examined and thereafter an adjournment was sought. Prayer was rejected. It appears that thereafter PW-1 has never been

cross examined by the Advocate and the learned Magistrate has closed the cross examination. As such virtually there is no cross examination of the star witness in the case. I have gone through the order of the learned Magistrate. It appears that the case is time bound matter and therefore, the learned Magistrate was not inclined to adjourn the case. The learned Magistrate has also taken note of the special provisions of the Act. I can understand the anxiety of the Magistrate in disposing of the case as early as possible. At the same time learned Magistrate shall realise that the right to fair trial is a fundamental right and if such a case is finally decided and if it goes in appeal in case of conviction, it could be remanded back for fresh trial. That will result in more consumption of time. Learned Magistrate without realising these issues has taken a very hasty decision. In my opinion the order of learned Magistrate needs to be set aside.

4. Writ petition is allowed. Order of the learned Magistrate rejecting the recall of PW-1 is set aside. The learned Magistrate is directed to allow the Petitioner to recall PW-1 for further cross examination and shall give fair opportunity to the Petitioner to cross examine the witness.

5. The writ petition stands disposed of accordingly.

(JUDGE)