

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1288 OF 2014

Mr. Vikas Yashwant Madhavi ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Ms. K.H. Rajani, Advocate for the Applicant.

Mr. V.B.Konde-Deshmukh, APP for the State-Respondent.

CORAM : M.L.TAHALIYANI, J.

DATE : 08 JANUARY, 2015

P.C. :

1 Heard the learned Advocate Ms. K. H. Rajani appearing for the Applicant and the learned additional public prosecutor for the State. Perused the impugned order.

2 The Applicant is an accused in a special case no. 2 of 2013 pending before the Special Judge (under the Protection of Children From Sexual Offences Act), Thane, and is facing trial for the offence punishable under section 376 of the Indian Penal Code. It appears that PW-1 (mother of the prosecutrix) could not be cross-examined because the learned Advocate for the Applicant was absent on the date when her examination-in-chief was recorded. Her examination-in-chief was recorded on 18th September, 2014 and the application was made for recall

of PW-1 and PW-2 on 3rd December, 2014. The said application came to be rejected by the learned trial Judge by an exhaustive order. The learned trial Judge has cited various reasons which mainly include the negligence on the part of the lawyer. The learned Judge failed to realize that in the absence of the cross-examination of two prime witnesses there was every possibility of the case being remanded back by the appellate court if an appeal is preferred by either of the party. No prejudice would have been caused to the prosecution had the application been allowed.

3 In the circumstances, the order passed by the learned additional Sessions Judge in special case no. 02 of 2013, rejecting the prayer for recall of PW-1 & 2 is set aside. PW-1 and PW-2 be recalled on the application made by the Applicant and sufficient and fair opportunity shall be given to the Applicant to cross-examine the witnesses.

4 Criminal Application stands disposed of accordingly.

(JUDGE)

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