

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

CRIMINAL APPLICATION NO. 4044 OF 2016

Ganesh s/o Sudhakar More ...Applicant

VERSUS

The State of Maharashtra & anr. ...Respondents

.....
Shri N.B.Narwade, advocate for applicant
Shri N.T.Bhagat, A.P.P. for respondent no.1
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CORAM : N.W.SAMBRE, J.

DATED : 28th September, 2016

PER COURT :-

In Sessions Case No. 173 of 2015, evidence of witness no.1 the victim in the said crime came to be recorded.

On the request of defence i.e. present applicant/accused, the cross-examination was deferred on 20.11.2015.

On the next date i.e. 1.12.2015, the applicant/accused has failed to cross-examine the

victim and sought adjournment, which application came to be rejected. Thereafter the applicant moved an application (Exh.23) seeking recalling of the said witness, which came to be rejected by the learned Special Judge on 21.6.2016, as such present application.

Shri Narwade, learned counsel for the applicant would urge that since the applicant's counsel remained absent, his client be not put to prejudice. According to him, though the conduct of defence is not justifiable, however, in the interest of justice and fair play, particularly principles of natural justice, an opportunity needs to be given to the applicant to cross-examine the victim who is a star witness to the crime in question.

Learned A.P.P. opposed the application and invited my attention to the very conduct of the accused in not proceeding with the cross-examination of the victim who appears to be a

student. He would then urge that appropriate orders may be passed against the accused.

Having bestowed my thoughts to the submissions made, it is required to be noted that the trial in Sessions Case has already commenced and the victim has entered into witness box. The learned counsel for the accused remained absent and as such the matter was required to be deferred at the behest of the accused. The learned counsel for the accused even thereafter has not conducted the cross-examination and on subsequent date moved an application (Exh.23).

An assurance is given by the learned counsel for the applicant Shri Narwade that the applicant, if given opportunity, shall not seek any adjournment and shall conclude the cross-examination of the victim on the given date. In my opinion, in the interest of justice, an opportunity of hearing is required to be given to the applicant, so as to enable him to cross-

examine the victim. In view thereof, the application needs to be allowed. As such, I pass following order.

The undertaking given by the applicant through his counsel that he shall not seek any further adjournment is accepted. The applicant shall deposit costs of Rs.5,000/- before the learned Sessions Court. Out of the said amount, Rs.3,500/- be given to the victim and Rs.1,500/- be paid to the prosecution.

The order passed below Exh.23 on 21.6.2016 by the Special Judge (POCSO Act), Ahmednagar in Sessions Case No. 173 of 2015 is hereby quashed and set aside. Application Exh.23 stands allowed.

Criminal Application stands disposed of in above terms.

(N.W.SAMBRE, J.)