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

CRIMINAL WRIT PETITION NO. 1245 OF 2016

Umesh Dattatray Birajdar,
Age: 22 years, Occu: Education,
R/o: Shastri Nagar, Tq. : Omerga,
Dist. Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra,
through Investigation Officer &
In charge Police Station Omerga,
Tq. : Omerga, Dist : Osmanabad

..RESPONDENTS

Mr P. V. Barde, Advocate for petitioner;
Mr K. D. Munde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd October, 2016

ORAL ORDER :

In Special (POCSO) Case No. 9 of 2014, pending on the file of learned Special Judge, Omerga, the present petitioner is an accused and the trial therein has commenced, as the evidence of P.W.1 victim has been recorded.

2. The examination-in-chief of the said witness was recorded on 18th June, 2016, however, present petitioner refused to cross-examine the said witness. Hence, in view of proviso (c) to sub-section 2 of section 309 of the Code of Criminal Procedure, the cross-examination by the defence came to be closed.

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3. An application Exh. 42 came to be moved on 18th June, 2016, on behalf of the petitioner, seeking permission to cross-examine P.W.1 victim, which was also rejected, as the petitioner and his lawyer were not ready to proceed with the cross-examination.

4. Another application Exh. 45 came to be moved seeking recalling of the prosecution witness No.1 for the purpose of cross-examination, by setting aside “no cross” order and in view of the conduct as is noted herein above and in addition thereto, an adjournment/accommodation as was granted to the petitioner, the said application was rejected on 2nd August, 2016. As such, present petition.

5. Mr Barde, learned Counsel appearing on behalf of the petitioner would urge that the right of cross-examination is an integral part of the principles of natural justice to be followed. According to him, though the petitioner and his lawyer were unable to cross-examine the witness, still that was on account of certain genuine reasons, as the lawyer was not prepared for want of instructions. Learned Counsel would then submit that he has instructions to furnish an undertaking before this Court that the petitioner-accused henceforth shall not seek any adjournment in the matter and shall also adequately compensate the witness.

6. Pursuant to the order of this Court, the petitioner has tendered a receipt demonstrating deposit of an amount of Rs. 15,000/- in the above

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referred special case.

7. The claim is objected by the learned Addl. Public Prosecutor on the ground that the observations as are made by the learned Special Judge, particularly in the order passed below Exh.45 speak that there is an attempt on the part of the petitioner to prolong the trial and defeat the cause of justice. According to him, the petition being devoid of merit be rejected.

8. Having bestowed my thoughts to the submissions made, it is required to be noted that the trial has yet to reach at the stage of conclusion. The petitioner through his lawyer has already given an undertaking before this Court that henceforth he shall not seek any adjournment till conclusion of the trial. He has also deposited costs of Rs. 15,000/- before the learned Special Judge.

9. With a view to give last opportunity to the petitioner and to sub-serve the interest of justice, in my opinion, it will be appropriate to allow the present petition by setting aside the orders impugned. I, therefore, pass following order :

The orders dated 18th June, 2016, passed below Exhs. 37 and 42 and the order dated 2nd August, 2016, below Exh. 45, by the learned Special Judge, Omerga, in Special (POCSO) Case No. 9 of 2014, are hereby quashed and set aside.

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The petitioner is permitted to cross-examine P.W.1 victim.

Out of the amount of costs of Rs.15,000/-, amount of Rs.7,500/- be paid to the victim towards her expenses and Rs.7,500/- be deposited in the public exchequer.

Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj