

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1540 OF 2015

Shaikh Ruksana Shaikh Sharif ..Petitioner

Versus

Shaikh Akash s/o. Shaikh Masum
and ors. ..Respondents

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Mr.M.P.Kale, advocate for petitioner

Mr.S.V.Mundhe, advocate for respondent no.1

Mr.R.B.Bagul, APP for respondent no.3 - State

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 25, 2016

PER COURT :

Heard both sides.

2] Rule. Rule made returnable forth. By consent of parties, heard finally.

3] Present petitioner is the complainant on the basis of whose complaint, Sessions Trial No.17 of 2013 for the offences punishable under Section

376, 363, 366 read with 34 of Indian Penal Code, is pending before the learned Addl. Sessions Judge, Gangahed.

4] In nut-shell, the allegations of the petitioner/complainant are that the minor victim daughter of the complainant was forcibly raped by the present respondent no.1.

5] As regards the age of the victim, initially, learned A.P.P. in the trial Court, had filed an application submitting thereby that the complainant had handed over him the school leaving certificate of the school where the victim was taking education and the learned A.P.P. wanted to file the same on record and to examine the witnesses.

. The learned Addl. Sessions Judge rejected the said application on the ground that though, as per

the provisions of Section 311 of the Code Criminal Procedure, wide powers are conferred to the Court to examine any person or to call for recording the evidence, under Section 173(8) of the Code of Criminal Procedure, the Investigating Officer is required to file additional charge sheet and the A.P.P. cannot move the Court.

6] Thereafter, again the A.P.P. in the trial Court filed application at Exhibit 57. He submitted that during course of the investigation, the Investigating Officer in fact, has issued letter to the Headmaster of the school, calling for the school admission documents. However, during course of the long standing search of the victim, the matter could not be persuaded and the documents could not be collected. In the circumstances, permission to file additional documents and opportunity to prove those documents, was sought.

. The learned Addl. Sessions allowed the said application partly and granted permission for production of documents. However, the request for examination of the witnesses to prove the same was rejected. Hence, the present Writ Petition.

7] Upon hearing both sides, in my view, when the learned Addl. Sessions Judge has granted permission for production of documents, the said order would be worthless unless those documents are permitted to be proved by the witnesses. The learned Addl. Sessions Judge has already referred to the provisions of Section 311 of the Code of Criminal Procedure. Said provisions has to be exercised in order to find out truth of the case.

8] In that view of the matter, in my view, present Criminal Writ Petition deserves to be allowed.

9] In the result, present Criminal Writ Petition is allowed. The impugned orders passed by learned Addl. Sessions Judge refusing permission to lead the evidence to prove the documents, is hereby set aside.

. Instead, the prosecution is permitted to lead the evidence by calling necessary relevant witnesses.

10] Rule is made absolute accordingly.

[M.T. JOSHI, J.]

kbp