

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.583 OF 2015

The State of Maharashtra .. Appellant
Versus
Mithilesh Harishchandra Yadav .. Respondent

Mrs.P.P. Bhosale, APP for the appellant State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 1st APRIL 2016

ORAL ORDER :-

1 The respondent was convicted of offences punishable under the Protection of Children from Sexual Offences Act, 2012 (POCSO), but instead of sentencing him to any punishment, the learned trial Judge thought it fit to give benefit of the provisions of Section 4 of the Probation of Offenders Act to him. Accordingly, the respondent was directed to be released on his entering into a bond in the sum of Rs.20,000/- with one surety, to appear and receive the sentence when called upon during a period of two years and in the mean time, to keep the peace and to be of good behaviour. It is against the said order that the State of Maharashtra has filed the present Appeal, purportedly under the provisions of Section 377 of the Code of Criminal Procedure (Code).

2 Section 377 of the Code speaks of an appeal *against the sentence* on the ground of its inadequacy. In this case, no

sentence has been awarded. There is, therefore, no question of 'inadequacy of sentence' and there is no question of seeking 'enhancement' of a non-existing sentence.

3 The Appeal, as filed by State of Maharashtra is not maintainable. The State of Maharashtra shall be at liberty to file an Appeal, as contemplated u/s.11 of the Probation of Offenders Act, if so advised.

4 Appeal is dismissed as not maintainable.

(ABHAY M.THIPSAY, J)