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

**CRIMINAL APPLICATION NO.852 OF 2016
IN
CRIMINAL APPEAL NO.266 OF 2016**

Annappa Ramchandra Hadpad	...Applicant.
VS	
The State of Maharashtra	...Respondent

.....
Mr Shyam Kalyankar i/b Rahul Vijaymane for the Applicant.
Ms A.A.Takalkar APP for the Respondent-State.
.....

CORAM : P.N.DESHMUKH, J.

03 OCTOBER, 2016

P.C. :

Heard learned advocate for the applicant and learned APP. This application is for allowing to record the additional evidence under Section 391 of Code of Criminal Procedure as the same is contended to be necessary to be on record before considering the application filed by the applicant for suspending of substantial sentence imposed upon him and for his release on bail.

2 Learned advocate for the applicant has contended that in all six witnesses were examined by the prosecution and though all these witnesses are cross-examined by the learned

counsel for the applicant before the learned Trial Court, it is revealed that the cross-examination conducted was hardly of couple of lines in the form of suggestions alone. It is, therefore, contended that from the nature of cross-examination as aforesaid, no necessary questions, appears to have been put to the witness and thus it is submitted that the applicant was not properly defended at the time of trial and as such came to be convicted. The application is, therefore, prayed to be allowed thereby giving an opportunity to the applicant to cross-examine all the witnesses by issuing necessary directions to the learned Sessions Judge.

3 Learned advocate for the applicant in support of his submission has relied upon order of Division Bench of this Court passed in Criminal Application No.1156 of 2009 in Criminal Appeal No.1179 of 2008 with Criminal Application No.936 of 2009 in Criminal Appeal No.1179 of 2008, wherein this Court has given directions to the learned Sessions Judge to recall witnesses and has granted an opportunity to the accused to cross-examine witnesses as they have not been cross-examined at the time of trial.

4 Involvement of applicant in this application is found in the offence P/u/s 376(2)(f)(i), 506 of IPC and Section 5(m)(n) and 6 of the Protection of Children from Sexual Offences, Act, 2012. The applicant is real uncle of the prosecutrix who is aged 13 years and prior to lodging of report dated 9 January, 2014,

was subjected to sexual assault at the hands of applicant from time to time. Evidence of the prosecutrix establish involvement of the applicant. Similarly her evidence is found corroborated from the medical evidence, who has deposed that though there are no injuries to genital/anus, one of the reason could be delay in reporting the matter and as such delay in medically examining prosecutrix. It has also come on record that at the time of incident, the prosecutrix had not attained menarche. It has further come on record that blood stained underwear of the prosecutrix was seized during the course of investigation, which *prima facie* link with the act of sexual assault of applicant.

5 Considering the available evidence on record and even otherwise on considering the fact that all the witnesses are duly cross-examined for the applicant, there appears no substance in the case of the applicant when it is contended that the witnesses are not cross-examined in details.

6 In any case, fact remains that all the witnesses are duly cross-examined, it is no case of the applicant that his counsel was not present or that no opportunity was granted to the applicant to cross-examine the witness personally, or applicant has not availed any such opportunity. In fact it is seen that all the witnesses are duly cross-examined. In that view of the matter, order passed by the Division Bench of this Court, relied on behalf of the applicant cannot be considered in favour of applicant as in that case witnesses were not cross-examined

at the time of trial and in that event, directions were issued to the learned Sessions Judge to recall witnesses to offer an opportunity to accused to cross-examine the witnesses. As such the facts involved in the application in hand and order relied by applicant as are materially distinguishable.

7 For the reasons as aforesaid the applicant is thus devoid of any merits and the same is rejected.

(P.N.DESHMUKH J.)