

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1219 OF 2017

A. Kushalappa Gowda and anotherPetitioners

Vs.

The State of Maharashtra and Ors ... Respondents

Mr. Uday B. Nighot Advocate for Petitioners

Ms. Neeta Jain APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 29th MARCH, 2017.

P.C.

1) Heard.

2) Rule. Rule made returnable forthwith with the consent of the parties.

3) Applicants herein are accused in Special POCSO Case No. 31 of 2016.

The survivor was examined by the Special Court on 14/12/2016. At the time of trial, mother of the survivor had turned hostile. It appears from the records that on 28/02/2017, accused/petitioner filed an application seeking recalling

of survivor as inadvertently certain suggestions were not given. The learned Special Court vide order dated 28/02/2017 was pleased to reject the same.

4) The learned Special Court had rightly observed that the suggestions that were to be given to the witness were not mentioned in the application seeking recall of the said witness. There was no material on record which can enable the court to record subjective satisfaction for recalling the witness and therefore, the learned Special Court had rejected the application. It is pertinent to note that Sessions Court has observed that in the course of recording of examination-in-chief, the survivor was frightened and therefore, the examination-in-chief had to be deferred for some time. The survivor and the accused are inhabitants of the same village. The Sessions Court has observed that the applicant/accused had won over the complainant since she had resiled from her earlier statement. In the interest of the survivor, the learned Sessions Court had rejected the application.

5) In any criminal trial, witnesses are eyes and ears of the Court. It is a Court of recording of facts in the course of recording evidence. Applicant

would be at liberty to state his defence in the statement under section 313 of Code of Criminal Procedure, 1973 and the same shall be considered on merits by the learned Special Court.

6) In view of this, Rule is discharged.

7) Writ petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)