

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

**CRIMINAL WRIT PETITION NO.2302 OF 2017**

Raju Lal Singh Kayne @ Raj  
Lalsingh Parki .. Petitioner.  
Vs.  
The State of Maharashtra .. Respondent.

Mr.Moinuddin Khan for the Petitioner.  
Mr.Vinod Chate APP for the Respondent.

**CORAM : A. K. MENON, J.**

**DATED : 1ST JULY, 2017**

**P.C. :**

1. By this writ petition, the petitioner challenges two orders passed by the Special Judge appointed under the Protection of Children from Sexual Offences Act, 2012 (POSCO). The learned counsel for the petitioner submitted that by the first impugned order dated 27th January, 2016 the Designated Judge rejected the application for recalling P.W.1 and P.W.2. That at the time of recording examination in chief of P.W.1 and P.W.2 the present Advocate of the applicant was not engaged. Thereafter the applicant changed his Advocate and appointed the present Advocate. In the circumstances it is the case of the applicant that the previous Advocate was indeed present at the time of recording evidence of the two witnesses. The roznama indicates that at the time of cross examination of P.W.1 there was probably dispute between the the Advocate

and accused, and the Advocate had declined to cross examine the witness. Thereafter an opportunity was granted to the accused to cross examine and he had done so.

2. With respect to P.W. 2 the accused had on the very first opportunity requested for adjournment and at his request the matter was adjourned for cross examination of P.W.2. The Advocate was thereafter appointed on 7th April, 2015 but despite this the Advocate did not remain present and after three opportunities were granted to the accused and his Advocate the cross examination of P.W.2 was closed and the witness was discharged.

3. This order was passed on 27th January, 2016. The learned counsel further points out that thereafter two applications were made seeking very same relief i.e. recall of P.W.1 and P.W.2. This application was rejected by the order dated 21st March, 2017. On a query from the Court as to when the second application was filed, learned counsel states that the second application was filed in the year 2017. The impugned order dated 21st March, 2017 clearly records that no application of the review of order could be made before the same Court. It further records that the Supreme Court had held in the case of A.G. vs. Shiv Kumar Yadav and Anr. AIR 2015 SC 3501 that recalling of witnesses cannot be routinely permitted on that ground that the cross examination was not proper and for reasons attributable to counsel.

4. Witnesses and victims ought not made to face hardship in appearing before the Court and the second application was therefore rejected once again observing that the new Advocate for the accused had been given three opportunities but he failed to attend and hence the cross examination was closed. Thus it is observed that ample opportunities were given to the Advocate.

5. Although, I have heard learned counsel for the applicant at length on this aspect it is evident from the first order dated 27th January, 2016 that the order was passed after the new Advocate was appointed. The roznama indicates that three opportunities were given to the applicant and his Advocate to cross examine P.W.2 P.W.1 is the victim, who is a 11 year old child and learned Judge recorded that ample opportunity was given to the applicant and his Advocate, presumably previous Advocate, to cross examine yet this was not done. What is material to note is that after the order dated 21st January, 2016 was passed declining recall of witness, the applicant made no application to challenge such order for about a year. This is obvious from the fact that the second application in which the second impugned order was passed was filed in the year 2017 as the impugned order is dated 21st March, 2017. If the case of the applicant is indeed believable there was no reason for the applicant to wait for one year and file a second application.

6. Admittedly, there is no challenge to the impugned order dated 27th January, 2016 till today. In the circumstances I find and especially given the fact that offence is under POSCO Act and the age of the victim, it is not in the interest of justice that the victim be exposed to rigors of further cross examination in the facts and circumstances of the present case where cross examination did not take place and there was sufficient opportunity given to the applicant and his Advocate. In the circumstances this is not a fit case where this Court must exercise its writ jurisdiction. I therefore pass the following order :

- (i) Writ petition is rejected.
- (ii) The trial Court shall proceed to hear the case uninfluenced by the observations made in this order.

**(A.K. MENON, J.)**