

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO. 148 OF 2017
(for leave to appeal by State)**

The State of Maharashtra ... **Applicant**

V/s.

Rizwan Shakil Vantamurikar ... **Respondent**

.....
Mr. P.P.Jadhav, APP for the applicant/State

None for the Respondent

....
CORAM : A.M.BADAR J.

DATED : 15th DECEMBER 2017.

P.C. :

1 This is an application for leave to appeal by the State for challenging acquittal of the respondent/accused of offences punishable under Section 354, 506 of the Indian Penal Code as well as under Section 7 and 8 of the Protection of Children From Sexual Offences Act, 2012. The learned APP drew my attention to paragraph Nos. 14 and 16 of the judgment and order of a acquittal recorded by the learned Special Judge, Ratnagiri on 1.9.2017 and argued that the approach adopted by the trial Court is totally perverse.

2. I have carefully perused the impugned judgment and order as well as copies of deposition of prosecution witnesses and particularly, that of PW-2 Hamina Mahamad Farukh Khan and PW-3 Iqbal Abdul Latif Hunerkar, Principal of Mestri High School, Ratnagiri.

3. PW-3 Iqbal Abdul Latif Hunerkar, Principal of Mestri High School Ratnagiri had brought original record of the school including bonafide register and general register and on the basis of those original documents deposed that date of birth of the victim female child is 1.11.2000. On the basis of original documents, this witness proved bonafide certificate which was marked as **Exh.35**. The learned Trial Judge rejected this evidence with an observation that the bonafide certificate at **Exh.35** is a photo copy. It is held that the prosecution has failed to prove that the victim was a child at the time of the incident. This approach is prima facie perverse. So far as the sexual assault is concerned, the learned trial Court has observed in para 16 that the victim is not saying that the accused caught hold of her hand and told her that he loves her and if she fails to reciprocate, he will throw acid

on her. Perusal of evidence of victim female child which is examined as the PW-2 shows that she has categorically deposed on this aspect implicating the applicant in the crime in question. Prima facie, it is seen that the learned trial Judge ignored the evidence of the minor female child.

4. In this view of the matter, leave is granted. Appeal is admitted. The application be treated as memo of appeal.

5. Issue notice to the respondent/accused.

6. Call for Record and Proceedings.

7. In the meanwhile, action under section 390 of the Code of Criminal Procedure before the learned Trial Court.

(A.M.BADAR J.)