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

WRIT PETITION NO.263 OF 2018

Akshay Dipak Phatak	...Petitioner
Versus	
State of Maharashtra	...Respondent

Mr.A.B.Tajane, for the Petitioner.

Mr.Yogesh Dabke, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th FEBRUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent-State.
3. By this petition, the petitioner has impugned the order dated 8th December, 2017, passed by the learned Additional Sessions Judge, Pune,

below Exhibit – 17 in Special Sessions Case No.193 of 2016, by which the petitioner's application (Exhibit – 17) for setting aside the order of 'No cross', came to be rejected.

4. Perused the papers. The petitioner was arrested in connection with C.R.No.238 of 2015, registered with the Swargate Police Station, Pune, for the alleged offences punishable under Sections 363, 366 and 376 of the Indian Penal Code and under Sections 7 and 8 of Protection of Children from Sexual Offences Act, (POCSO). After investigation, charge sheet was filed and case was committed to the Court of the learned Special Judge dealing with the POCSO cases and the case was numbered as Special Sessions Case No.193 of 2016. On 6th September, 2017, the prosecution examined its first witness and the matter was adjourned for recording further examination-in-chief of the witness on 8th December, 2017. On 8th December, 2017, further examination-in-chief of PW1 was conducted. After examination-in-chief was over, as the petitioner's advocate was absent, cross examination could not be conducted and hence, the learned Judge recorded as under:- 'Declined. No cross'. Admittedly, the petitioner was present at that time, however, his Advocate was absent. In view of the said

order of 'No cross' passed by the learned Judge on 8th December, 2017, on the very same day i.e. 8th December, 2017, the petitioner's advocate filed an application stating that the Senior Advocate was not present at the time of recording of cross-examination of PW1, pursuant to which, an order of 'No cross' was passed. It was further mentioned in the said application that the Senior Advocate is ready to cross examine PW1 today i.e. on 8th December, 2017 itself. It was also prayed that in view of the aforesaid, 'No cross' order, be set aside and accused be permitted to examine PW1. The learned Judge was however pleased to reject the said application (Exhibit – 17). It is not in dispute that the advocate was not present when he was called upon to cross examine PW1. It is also not in dispute that soon after the 'No cross' order was passed, the advocate filed an application (Exhibit – 17) and stated that the advocate was ready to cross examine PW1 on the very same day and prayed that 'No cross' order be set aside. Considering that the request was made on the very same day, the learned Judge instead of setting aside the order of 'No cross' as the Advocate was ready to proceed with the cross on the very same day, rejected the application.

5. Considering the aforesaid, the petition is allowed and the

impugned order dated 8th December, 2017, passed by the learned Additional Sessions Judge, Pune, below Exhibit – 17 in Special Sessions Case No.193 of 2016, is quashed and set aside. The Advocate for the petitioner is permitted to cross examine PW1 on the date/s given by the trial Court.

6. Learned Counsel for the petitioner states that the Advocate for the petitioner will remain present on the date/s given by the trial Court and will not seek any adjournments and will cross examine PW1 on the next date.

7. The Petition is allowed in the aforesaid terms and is accordingly disposed of. Rule is made absolute in the aforesaid terms.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.