

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

**CRI. REVISION APPLICATION NO.311 OF 2018**

Jayesh Arjun Katira .. Applicant

**Vs.**

The State of Maharashtra .. Respondent

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Mr.Umesh V. Mohite, Advocate for the Applicant.  
Mr.A.R. Patil, APP for the Respondent - State.  
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**CORAM : PRAKASH D. NAIK, J.**

**DATED : JULY 4, 2018.**

**P.C. :**

This is an application challenging the order passed by the learned Special Judge under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act", for short), on 13<sup>th</sup> April, 2018, rejecting the application for recalling of witnesses.

2           The applicant is prosecuted for the offences punishable under Sections 376 and 506 of the IPC and Sections 4 and 8 of the POCSO Act read with Section 66(a)(i) of the Information Technology Act (hereinafter referred to as "IT Act", for short). The offence was registered on 6<sup>th</sup> September, 2014

vide C.R.No.428 of 2014. On completing the investigation, charge sheet was filed. The proceedings are pending before the Special Court.

3           The prosecution examined about 10 witnesses. In pursuant to that, the applicant preferred an application for recalling P.W.1 and P.W.2. It was alleged before the trial Court that the witnesses were cross-examined by the earlier advocate and, therefore, there was a change of lawyer on 4<sup>th</sup> October, 2017. It was stated that after completing evidence of P.W.1 and 2, defence has produced certain documents before the Court. It is the defence of the accused that he has been falsely implicated by the victim (P.W.1) and her mother (P.W.2). The defence of the accused is that the victim and her mother are in habit of filing false complaints. It was stated that the earlier advocate had conducted the cross-examination, however, on certain issues, the cross-examination was required to be conducted in relation to the earlier cases filed by the victim and her mother as well as the extortion case lodged by the accused against the victim which are very vital to the just decision of the case.

4            Learned Sessions Judge vide order dated 13<sup>th</sup> April, 2018, rejected the application. While rejecting the said application it was observed that sufficient opportunity was given to the accused to cross-examine the witnesses which was availed of and the witnesses were cross-examined by the advocate representing the accused. After examining as many as eight witnesses, the accused preferred application under Section 311 of the Cr.P.C. It was further observed that the accused has right to lead evidence as well as exhibit documents during his statement under Section 313 of Cr.P.C. or he can avail of the said remedy in accordance with Section 314 of Cr.P.C. The witness were already cross examined in detail at the instance of earlier advocate and permitting such application would be an unending process and not an healthy practice.

5            Learned counsel for the applicant submits that powers under Section 311 of the Cr.P.C. can be exercised at any stage before the conclusion of the trial. What is required to be established is that it was for the just decision of the case, the witnesses are required to be recalled in exercise of powers under said provision. It is submitted that the defence of the accused is that he has been falsely implicated and that the victim and her

mother are habitually filing false complaint. It is further submitted that further cross-examination are required to be conducted *qua* the documents relied upon by the accused as well as the birth certificate of the victim and the CDR relating to calls exchanged between P.W.1 and the other persons. It is further submitted that in order to establish his defence these questions are required to be put to the witnesses which are vital in nature, and, therefore, the Court ought not to have reject the application. He also pointed out the list of documents filed by the prosecution in the proceedings. It is submitted that witness no.6 Smt.Pramila Khandare, witness no.7 Smt.Latabai Kale and witness nos.17 and 18 were cited as witnesses, but, they were not examined by the prosecution. The defence was expecting that the said witnesses would be examined and opportunity will be available to the defence to cross-examine them to establish the defence. It is, therefore, submitted that the order passed by the Sessions Court be set aside and the applicant - accused be permitted to recall P.W.1 and P.W.2 for further cross-examination.

6            Learned APP submitted that the accused is protracting the trial by making such application. Change of lawyer is not a ground to prefer such an application and recall

the witnesses. It is further submitted that the witnesses sought to be recalled were cross-examined at the instance of the defence in detail and after examining of about 8 witnesses, the application was preferred for recalling the witnesses. The witnesses cannot be recalled merely because the accused preferred an application. The purpose of Section 311 of the Cr.P.C. is to meet the ends of justice and power is to be exercised only for the just decision of the case. In the present case, looking into the cross-examination conducted by the accused, recall of witnesses is not warranted. It is further submitted that the Sessions Court has rejected the application by assigning reasons which does not require interference.

7           On perusal of the documents on record, it is apparent that the prosecution has examined about 10 witnesses. Earlier lawyer representing the accused had indeed cross-examined the witnesses. The defence of the accused is of a false implication and that the victim and her mother is habitually filing such complaints. It is also apparent that the defence has produced certain documents which are taken on record by the trial Court. Admittedly, the witnesses which are cited in the list of witnesses as stated above were not examined by the prosecution and the

matter is now posted for recording statement of the accused under Section 313 of Criminal Procedure Code. Although, the witnesses were cross-examined by the advocate representing the accused, in the facts and circumstances of the present case and in the light of the reasons stated in the application and the submissions advanced by the learned advocate for the applicant, for the just decision of the case, it would be appropriate to allow the application preferred by the applicant - accused under Section 311 of Criminal Procedure Code

8           It is a settled law that the powers under Section 311 of the Criminal Procedure Code can be exercised at any stage. What is required to be seen is that the application is preferred for the just decision of the case. Taking into consideration the evidence on record, the cross-examination which is already conducted and the grounds raised in support of the application for recall of witnesses, the application under Section 311 of the Criminal Procedure Code deserves to be allowed.

9           Hence, I pass the following order:

**:: ORDER ::**

- (i) Criminal Revision Application is allowed;
- (ii) The impugned order dated 13<sup>th</sup> April, 2018, passed by the Special Court under the POCSO Act, is set aside;
- (iii) Trial Court is directed to recall P.W.1 and P.W.2;
- (iv) After the witnesses are recalled, the defence be permitted to cross-examine the said witnesses. The accused shall not delay cross-examination. The cross-examination be completed as expeditiously as possible;
- (v) Criminal Revision Application stands disposed of.

**(PRAKASH D. NAIK, J.)**