

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.132 OF 2018

PADMINI VINAY LIKHAR

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Murtuza Nazmi i/b. Mr.Mehul Thakkar, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 25th JULY 2018

P.C. :

1 This is an application under Section 407 of the Code of Criminal Procedure by the accused in Sessions Case No.337 of 2016 which is pending for adjudication before the learned Assistant Sessions Judge, Dindoshi, Mumbai.

2 Heard the learned Advocate appearing for the applicant/original accused. He argued that the applicant/original

accused is charged for offences punishable under Sections 370 and 374 of the Indian Penal Code as well as under Sections 26, 32(1)(3) of the Juvenile Justice (Care and Protection of Children) Act. The learned Advocate further argued that according to the prosecution case, victim child was below the age of majority, and therefore, the offence is punishable for a term which shall not be less than 10 years but which may extend to imprisonment for life, and as such, the learned Assistant Sessions Judge is not competent to try the subject sessions case. The learned advocate placed reliance on judgment of this court in the matter of **Prabhakar L. Pawar vs. State of Maharashtra and Another**¹.

3 I have also heard the learned APP. The learned APP submitted that the victim child was found to be 15 years of age and therefore, on proof of the offence alleged against the applicant/original accused, she shall be liable for punishment which may extend to imprisonment for life.

¹ 2012 CRI.L.J. 4726

4 As per sub-section (3) of Section 28 of the Code of Criminal Procedure, an Assistant Sessions Judge can pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding 10 years. The case in hand reveals that the victim of the crime in question, at the relevant time, was about 15 years of age. Trafficking of a minor is made punishable with imprisonment for a term which shall not be less than 10 years but which may also extend to imprisonment for life, and hence, the Assistant Sessions Judge, in the event of proof of the offence, may not be competent to impose the punishment as prescribed by law. Hence, a case for transfer is made out, and as such, the order :

ORDER

- i) The application is allowed.
- ii) The Sessions Case No.337 of 2016 is transferred from the file of Assistant Sessions Judge, Dindoshi, Mumbai, to the court of Additional Sessions Judge, Dindoshi, Mumbai.

iii) The Principal District and Sessions Judge, City Civil and Sessions Court, Mumbai, is requested to assign the said sessions case to the court of competent jurisdiction viz., Additional Sessions Judge, Dindoshi, Mumbai.

iv) The application is disposed of.

(A. M. BADAR, J.)

Arti Vilas
Khatate

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