

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.706 OF 2018

(ASHISH MURLIDHAR GEDAM...VS.. STATE OF MAH. THR. PSO PS JARIPATKA, NAGPUR & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

None for Petitioner.
Shri V.P.Gangane, A.P.P. for Respondent/State.

CORAM : Z.A.HAQ, J.
DATED : OCTOBER 25, 2018.

By this petition, the petitioner-accused has challenged the order passed by the Sessions Court by which the applications (Exh.21 and Exh.24) filed by the accused are rejected. By the application (Exh.21) the accused prayed that the victim be recalled for cross-examination. By the application (Exh.24- perhaps Exh.23) the accused prayed that the victim be recalled and her evidence be recorded again as, earlier her evidence was recorded in the absence of the accused.

By the order dated 13th August 2018, this Court directed issuance of notice to the respondents. None appeared for the petitioner on 12th September 2018. The matter was adjourned for 17th September 2018, 19th September 2018, 1st October 2018 and 5th October 2018. Today, none appeared for the petitioner in the morning session. The matter was kept back. In the afternoon session, again none appears for the petitioner.

I have heard Shri V.P. Gangane, learned A.P.P. and have gone through the documents placed on the record

of the petition. From the impugned order it is clear that the cross-examination of the victim was conducted by the advocate for the accused on 19th August 2017. The application (Exh.21) praying that the victim be recalled for cross-examination is filed on 27th October 2017 i.e. after two months and a week. The reason given in the application (Exh.21) is that the advocate representing the accused was not in a position to cross-examine the victim on 19th August 2017 as relative of that advocate had expired on 18th August 2017. The learned Sessions Judge has recorded that the advocate for the accused had not filed any application on 19th August 2017 seeking adjournment.

In the above facts, in my view, the learned Sessions Judge has rightly rejected the application (Exh.21). The jurisdiction under Section 311 of the Code of Criminal Procedure cannot be exercised for the asking by the party and in routine manner.

As far as the application (Exh.24) is concerned, I find that it is also rightly rejected by the learned Sessions Judge. The examination-in-chief of the victim was recorded on 19th August 2017 and then the victim was cross-examined on behalf of the accused. The application (Exh.24-perhaps Exh.23) was filed on 2nd December 2017 i.e. after 3½ months. In this application, the accused made a grievance that the examination-in-chief of the victim was conducted in absence of the accused and it is causing serious prejudice to the accused. The learned Sessions Judge has recorded that while recording examination-in-chief of the victim, precaution was taken as required by Section 33 and Section 36 of the Protection of Children from Sexual Offences Act, 2012. It is

relevant to note that no such grievance as made in the application (Exh.24) or Exh.23) was made earlier and the victim was cross-examined by the advocate representing the accused on 19th August 2017 itself.

I find that the impugned order does not suffer from any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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