

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.218 AND 219 OF 2018

STATE OF GOA, THR. MAPUSA POLICE
STATION.,

... Petitioner

Versus

VASIKUR REHAMAN, THR. BRKATULLAH
SHAIKH.,

... Respondent

Shri S. R. Rivankar, Public Prosecutor for the State-Petitioner.
Shri Rohan Desai, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Date : 3rd January 2019.

P.C.

Heard Shri S. R. Rivankar, learned Public Prosecutor appearing for the petitioner and Shri Rohan Desai, learned Advocate appearing for the respondent.

2. There appears to be a serious dispute about the identity of the accused as per the contention of Shri Desai, learned Advocate appearing for the respondent unlike the contention of Shri S. R. Rivankar, the learned Public Prosecutor appearing for the petitioner that right from the inception there was no such dispute on his identity. Moreover, he was placed under arrest on 12.03.2017 based on the complaint lodged by the father of the minor victim and even then at the stage of his initial custody there was no dispute with regard to his identity.

3. No doubt, there has been some lapse on the part of the Investigating Agency to seek for the recall of the Doctor and the Executive Magistrate to confirm the identity of the accused. Nonetheless, looking to the request letter made to the Police Surgeon as early as 17.03.2017 indicating the name of the respondent as Vasikur Rehaman without indicating his caste juxtapositioned with the report of the medical examination of the respondent in sexual offence, it is apparent that his name was as given in the petition i.e. as Vasikur Rehaman and specifying his caste and religion as muslim. The examination of the Doctor is therefore essential for confirming the identity of the accused who had been medically examined at the inception and so too the examination of the Executive Magistrate who had held the Test Identification Parade of the said Vasikur Rehaman and drawn a report of the TI parade in the name of Vasikur Rehaman. The Magistrate had accordingly issued the summons to the said Vasikur Rehaman for securing the presence for the TI parade to be conducted at the instance of the minor victim amongst others and who had been produced as such.

4. Considering thus that no serious prejudice would be caused to the respondent-accused and who would be given a

fair opportunity to further cross examine the witnesses, the impugned orders are quashed and set aside. The matter is remanded to the learned Children's Court to recall and examine the Doctor(Pw.5) and the Executive Magistrate(Pw.8). The defence shall restrict its cross examination only to the limited extent on the identity of the accused whether he was Vasikur Rehaman or Nakibur Rehaman as is his case purportedly alleged in the defence.

5. In the circumstances therefore the impugned orders are quashed and set aside by affording an appropriate opportunity to the respondent to cross examine the Doctor(Pw.5) and the Executive Magistrate(Pw.8). The learned Children's Court shall expeditiously deal with the trial and conclude the hearing within four weeks. The prosecution shall co-operate to ensure the presence of the witnesses for their recall and re-examination under Section 311 of the Cr.P.C. Opportunity is afforded to the respondent-accused to lead his evidence in defence thereafter.

6. In these circumstances, the petitions stand disposed off accordingly.

NUTAN D. SARDESSAI J.

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