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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.27 OF 2019

The State of Maharashtra ...Applicant  
vs.  
Kishor Babu Gavali ...Respondent

Mr.J.P.Yagnik, APP for the applicant

CORAM : A.S.OKA, &  
A.S.GADKARI, JJ.  
DATE : JANUARY 16, 2019

P.C.:

1 The applicant-State is seeking leave to prefer appeal. By the impugned order, the respondent has been acquitted for the offence alleged under sections 354 and 376 of the IPC and sections 4 and 8 of the Protection of Children from Sexual Offences Act,2012.

2 We have heard the learned APP for the applicant who has taken us through the notes of evidence. His submission is that there was no reason to disbelieve the version of the prosecutrix who was 10 years of old at the relevant time. He would submit that this is a fit case to grant leave.

3 We have perused the evidence of P.W.No.2 who is the victim of the offence. She has deposed as per the prosecution case. However, her case has been disbelieved by the Special Court on the basis of the

evidence of P.W.No.1 who is the mother of the victim. In the cross examination, P.W.No.1 admitted that there was a dispute between the accused and one Azad regarding the accused's daughter being teased by the said Azad. P.W.No.1 accepted that the respondent-accused and the said Azad were taken to the police station on 2<sup>nd</sup> June 2016 and they were there for the whole day. We may note that the alleged incident is of 2<sup>nd</sup> June 2016. The FIR was registered on 3rd June 2016. P.W.No.1 further accepted that someone on behalf of Azad had come to her house and had taken the children to the police station. She accepted that thereafter, the victim was asked to give a statement in the police station and the statement was given "as per their say".

4 Considering the aforesaid admissions, the Special Judge has disbelieved the testimony of the victim of the offence. Considering the aforesaid admissions of P.W.No.1 and the mother of the victim, we find that the view taken by the Special Court is certainly a possible view which could have been taken on the basis of the evidence on record.

5 Hence, no case is made out for grant of leave. Application is rejected.

(A.S.GADKARI,J.)

(A.S.OKA,J.)