

vks

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

**CRIMINAL WRIT PETITION NO.636 OF 2019**

|                      |     |             |
|----------------------|-----|-------------|
| Rafiq Hafiz Khan     | ... | Petitioner. |
| V/s.                 |     |             |
| State of Maharashtra | ... | Respondent  |

Mr. Prashant G. Pandey, for the Petitioner.  
Mr. A. R. Patil, APP for respondent State.

**CORAM : MRS. MRIDULA BHATKAR, J.**

**DATE : 8<sup>th</sup> FEBRUARY, 2019.**

**P.C. :**

- 1] Not on board.
- 2] Upon mentioning, taken on today's board.
- 3] With the consent of learned counsel for both parties, the petition is taken up for final hearing at the stage of admission itself.
- 4] In this Writ Petition, the order dated 10.01.2019, passed by the Designated Judge under Protection of Children from Sexual Offences Act, 2012, Greater Bombay, passed below Exh.10 in POCO Case No.328 of 2016 is challenged.
- 5] Learned counsel for the petitioner submits that the learned Judge is conducting the entire trial of POCSO *in-camera*. He submits that the entire evidence in POCSO Cases, need not be

recorded *in-camera* and only evidence of the child is to be recorded in Witness Chamber as per section 36 and 37 of POCSO Act.

6] He further submits that Section 36 and 37 is to be read in consonance with the sections 327(1) and (2) of the Code of Criminal Procedure.

7] Heard the submissions of learned counsel for the applicant and learned AGP, perused the order. It is necessary to clarify the *incamera* procedure of conducting the trial under POCSO under Section 36 and 37 of the Act. Under Section 310 of the Code of Criminal Procedure, all the Courts are open for the public. This rule is an exception to the trials under Section 376 of the Indian Penal Code. There is further rider to this rule under special statute of POCSO. The object of the Legislature enacting, sections 36 and 37 making provision of '*in-camera trial*', for trial of the cases is laudable which takes care of the mind, body and reputation of the victim. The word, "*incamera*" itself is not defined either in Code of Criminal Procedure or in POCSO. However, it means that recording of the evidence without audience and without sight of any other third party except stakeholder. Thus, in the criminal trial, the victim witness, Judge, the accused and the Prosecutor and the defence advocate and police are stake holders.

8] I am informed that in the Special Court of City Civil and

Sessions Court, in the court itself, the partitioned “L” shape cabins are created as witness chambers.

9] The grievance of the petitioner is that sometimes it is not possible for the accused to hear the evidence as special provision is made for the accused to sit away from the witnesses. It is made clear that in the trial under POCSO cases, when the evidence of the victim is going on or is recorded, at that time arrangements are to be made in such a way that the victim should not be able to see the accused. However, victim's evidence should be audible to the accused with a view to maintain the balance of fair trial.

10] Section 37 states that the Special Court shall try case *in-camera*, in presence of the parents of the child or any other person in whom the child has trust or confidence. Section 36 is specifically pertaining to the evidence of the child in the trial. Section 37 cannot be restricted to only recording of evidence of child, but it says that the Special Court shall try the accused *in-camera*. After recording of evidence of child/victim place of the trial can be shifted out of witness chamber to the Court hall, if such objection is raised by the accused. However, while conducting entire case, all the doors of the Court hall should be closed so that secrecy of the trial can be maintained. No other person is to be allowed to enter the Court hall except the stake holders.

11] In the present case, application is made for recording of evidence of the mother of the child and of other witnesses. Recording of evidence of these witnesses can be shifted from witness chamber to the Court hall, if it is not convenient to any party. However, at the time of recording evidence of these witnesses including the mother, no other person is to be allowed who has no concern with the accused, no other person who has no concern with trial and thus, trial is to be conducted *incamera*.

12] The writ petition is allowed in above terms.

**[MRS. MRIDULA BHATKAR, J.]**