

Anand

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

WRIT PETITION NO. 2469 OF 2019

Rajendra A. K. A. Rajkumar Popat Sathe .Petitioner

Vs.

The State of Maharashtra & anr. .Respondents

Mr. Anvil S. Kalekar, Advocate, for the Petitioner
Mr. A. R. Patil, APP, for the Respondent No. 1 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 03.12.2019

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. Learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 15.10.2018 passed by the learned Additional Sessions Judge, Solapur below Exh. 15 in Session Case No. 182 of 2017, by which the learned Sessions Judge has passed an order of ‘no cross’.

3. At the outset, learned APP states that the said order dated 15.10.2018 passed by the learned Additional Sessions Judge, Solapur of ‘no cross’ has been re-called by the learned Additional Sessions Judge, Solapur vide order dated 29.01.2019, below Exh. 19 filed by the Applicant seeking re-call of the order of no cross. He, therefore, submits that now there is nothing to prevent the Applicant from cross examining

the victim. Learned APP submits that the prosecution has closed its evidence by filing a pursis and that the matter was kept for recording the statement of the Petitioner under Section 313 of the Code of Criminal Procedure. He submits that in the interest of justice, the prosecution has no objection, if the victim is summoned for being cross examined by the learned counsel for the Petitioner subject to payment of costs.

4. Perused the papers. The Petitioner is an accused who was arrested in connection with C. R. No. 50 of 2017 registered with the Mohol Police Station, Solapur (Rural) for the alleged offences punishable under Sections 354, 323, 504 & 506 of the Indian Penal Code and under Sections 8 & 12 of the Protection of Children from Sexual Offences Act (for short 'POCSO'). The prosecution in support of its case examined eight witnesses including the victim as PW.2. It appears that the trial Court had fixed the matter on 15.10.2018 for cross-examination of the victim before the learned Sessions Judge. It appears that the Petitioner was present in the first session and later, the Petitioner could not remain present due to the ill-health of his mother. As the Petitioner was not present in the second session, his Advocate could not proceed with the cross-examination and as such, filed an Application seeking an adjournment, which was rejected by the learned Additional Sessions Judge vide order dated 15.10.2018. Learned counsel for the Applicant filed an Application (Exh. 19) and sought

re-call of the victim for cross-examination. The learned Sessions Judge vide order dated 29.01.2019 re-called the order of 'no cross' subject to the Applicant depositing Rs. 500/- as costs to PW.2. It appears that the said costs have also been deposited by the Applicant. It further appears that the matter was fixed for cross-examination of the victim on 08.04.2019, however, in the interregnum, the Applicant was arrested in connection with another offence on 01.03.2019 and as such, was in custody till 01.06.2019. It appears that on 08.04.2019 when the matter was kept for recording the cross examination of the victim, the Applicant was not produced and as such, again an adjournment Application was filed by the Petitioner's Advocate, which was rejected by the Sessions Court on 08.04.2019 and Advocate was directed to proceed with the cross-examination. In view of what is stated aforesaid, the challenge to the impugned order of 'no cross' dated 15.10.2018 does not survive. It appears that the Applicant could not remain present on 08.04.2019, as he was in custody in connection with another offence and as such, the learned Sessions Judge ought to have granted adjournment on this count. Neither was the Applicant produced by the police before the learned Sessions Judge. Learned APP states that they will produce the victim on the date given by the trial Court to enable the Advocate for the Petitioner to cross examine. Learned counsel for the Petitioner also assures that no adjournment will be sought by him on any count and that he will proceed with the case on the dates given by

the trial Court. Learned counsel for the Petitioner to produce a copy of the order before the learned Sessions Judge so as to enable the learned Judge to issue witness summons to the victim, for recording of cross-examination. The evidence of the victim is crucial and as such, the accused has a right to cross examine the said victim.

5. Accordingly, the Application is disposed of on the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)