

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

CRIMINAL WRIT PETITION NO. 2646 OF 2019

Sameer Gajanan Ghugre

...Petitioner.

VERSUS

The State of Maharashtra

...Respondent.

.....

**Ms. Suvarna Avhad Vast a/w. Mr. Prakash Salsingikar, Advocate for
Petitioner.**

Mr. Vinod Chate, APP for Respondent – State.

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CORAM : S. S. SHINDE J.
DATE : 15th JULY 2019.

P.C.

1. Heard, the learned counsel for the parties.
2. Being aggrieved by the order dated 10.10.2018 passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai under the Protection of Children from Sexual Offences (POCSO) Act, below Exh. 27 - A in Special Case No. 406 of 2014 in the Court of Session for Greater Bombay, this petition is filed.
3. Learned counsel appearing for the Petitioner submits that, the Petitioner is being prosecuted in a very serious offences and therefore, he

should get an opportunity to cross-examine PW-1 - Asmita Shashikant Tipale and PW-2 - Shashikant Yeshvant Tipale in relation to opinion of hand writing expert. It is submitted that, the report of the hand writing expert in sealed envelop was received before recording of the evidence of PW-1 and PW-2, however, said sealed envelop containing the report of the expert was opened after recording the evidence of PW-1 and PW-2. Therefore, at the time of recording evidence of aforesaid two witnesses the Petitioner had no access to said report. Learned counsel invites attention of this Court to the deposition of PW-1 and also PW-2 and submits that, in their examination-in-chief, both the witnesses have made reference to the chits (letter) which was shown to them during recording of their evidence, and they have stated that the contents of the said letter is in the hand writing of victim.

4. It is submitted that, the recording of evidence of both the witnesses have been completed in the month of December 2017. Report/opinion of the hand writing expert i.e. Additional Chief State Examiner of Documents C.I.D., Maharashtra State, Mumbai was received in the month of November 2017. The report of hand writing expert was

opened as per Roznama on 24.09.2018. Therefore, the Petitioner had no opportunity to cross-examine the aforesaid two witnesses, in relation to report/opinion of the said expert. Therefore, learned counsel appearing for the Petitioner submits that, petition deserves to be allowed.

5. On the other hand, learned A.P.P. appearing for the Respondent/State submits that, hand writing expert was examined by the prosecution and also cross-examined by the accused. Therefore, there is no question of cross-examining PW-1 and PW-2 once again since recording of their examination-in-chief and cross-examination, has been completed in the month of December 2017.

6. Upon appreciating the rival contentions and perusal of the grounds taken in the petition, annexure thereto and the copy of the expert's opinion tendered across the bar by the learned counsel appearing for the petitioner, this Court is of the opinion that, prayer of the petitioner deserves acceptance. Though the said opinion was given by the State Examiner of Documents C.I.D., Maharashtra State, Mumbai by letter dated 14.11.2017 in a sealed envelop and same was taken on record by the

concerned court, the said sealed envelop appears to have been opened by the Court on 04.06.2018. Upon careful perusal of the evidence of PW-1 and PW-2 it is abundantly clear that, both the witnesses adverted to the (letter) written by the victim, since the said document was confronted to them in the examination-in-chief. At the relevant time, while recording of their evidence, the opinion of the hand writing expert in respect of chit (letter) was not on record, and same appears to have been taken on record on 04.06.2018.

7. In that view of the matter and to avoid any prejudice to the case of the petitioner i.e. accused, the ends of justice would be met if the PW-1 and PW-2 are summoned for their cross-examination, however, confined to the opinion received from the State Examiner of Documents, C.I.D., Maharashtra State Mumbai. Accordingly, the impugned order dated 10.10.2018 is quashed and set aside. The Trial Court is directed to recall PW-1 - Asmita Shashikant Tipale and PW-2 - Shashikant Yeshvant Tipale for limited purpose for allowing the Petitioner to cross-examine both the aforesaid witnesses with regard to the opinion received from the State Examiner of Documents, C.I.D., Maharashtra State Mumbai. The Trial

Court to summon both witnesses on a particular date, and as assured by the learned counsel appearing for the Petitioner before this Court, the counsel for the Petitioner shall complete their cross-examination as far as possible on very same day.

8. With the above observations, Writ Petition stands disposed of.

[S.S. SHINDE, J.]