

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

**CRIMINAL APPLICATION STAMP NO.113 OF 2017
(For leave to Appeal)**

The State of Maharashtra : Applicant.
Versus
Trinath @ Ashok Simanchal Panda : Respondent

Mr. J P Yagnik, APP for the Applicant/State.

**CORAM : A.S.OKA &
A.S.GADKARI, JJ**
DATE : 21st January 2019

P.C.

1 This is an application under Section 378(3) of the Criminal Procedure Code for leave to file an Appeal against the Judgment and Order dated 10th February 2017 passed by the learned Judge of the Designated Court under the Protection of Children from Sexual Offences Act, 2012, for Greater Bombay acquitting the accused No.1 from the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and acquitting the accused Nos.2 and 3 from the offence punishable under Section 363 of the Indian Penal Code.

2 Heard the learned APP appearing for the Applicant/State. Perused the entire evidence available on record.

3 The respondent No.1 is alleged to have committed an offence punishable under Sections 363, 366 and 376 of the Indian Penal Code read

with Section 4 of the POCSO Act, and the respondent Nos.2 and 3 are alleged to have been helped the respondent No.1 in commission of the said offences.

4 A minute perusal of the evidence on record indicates that the prosecution has failed to prove the exact age of the prosecutrix on the date of alleged incident i.e. on 10th September 2013. Dr. Meena U Savjani (PW-3) in her testimony has stated that the age of the prosecutrix was about 17 years. There is a clear ambiguity about the age of the prosecutrix on the date of alleged incident of abduction. In her cross examination, the prosecutrix has admitted that she was residing at the aunt's house of the respondent No.1 for about 2 months at Ratanpur in the State of Odhisa. The prosecutrix had ample opportunity to narrate the alleged crime committed by the respondent to the neighbours. However, she did not do it. The evidence on record further indicates that the prosecutrix had attained the age of understanding and discrimination when she left the premises of her parents at her own free will and joined the company of the respondent No.1 to go to Ratanpur in the State of Odhisa.

5 The Trial Court has recorded a finding that, the prosecution has failed to prove that the prosecutrix was minor on the date of incident. As noted earlier, she voluntarily went with the respondent No.1 and stayed with him for three months till the police from Mumbai reached at the said place in the State of Odhisa.

6 After perusing the entire evidence available on record, this Court

is of the considered opinion that the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

7 No case for grant of leave to file appeal is made out.

8 The application is accordingly rejected.

[A.S.GADKARI, J]

[A.S.OKA, J]