

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

CRIMINAL APPLICATION NO. 76 OF 2018

The State of Maharashtra Applicant
(Ori. complainant)

Vs.

Mayur @ Chintya Vivekanand Respondent
Waghmare (Ori. accused)

Mr. A.A. Palkaer, APP for the State.

Coram : NITIN W. SAMBRE, J.

Date : 9th December 2019

P.C.:

1. Heard.
2. In Sessions Case No.25 of 2016, the respondent-original accused came to be acquitted of an offences punishable under Sections 376(2)(n) of the Indian Penal Code and 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 by the learned Special Judge (POCSO Act), Additional Sessions Judge-2, Nashik.
3. In the backdrop of the provisions of Section 29 of POCSO Act, which provides for presumption against the accused, as the Section

presumed that the accused is involved and he has to prove that he is not involved in the offence. Learned APP has drawn attention of this Court to the testimony of PW-5, Rajesh Bijendra Singh and also the testimony of victim-girl. According to him, Exhibit 69 is a birth extract of the victim-girl, which demonstrates that on the date of the incident, she was minor. As such it is claimed that there is an error in recording acquittal of the accused. Learned APP would also rely on the evidence of the investigating officer, who is examined as PW-9, Chandrashekhar Dattatray Bhabal at Exhibit 87, so as to claim that Article "D" is a photocopy of the birth extract.

4. If the aforesaid submissions are appreciated in the light of evidence on record, there are material contradictions and omission in the prosecution story. If the evidence of the victim-girl, who was examined as PW-4 at Exhibit 61 is appreciated in the light of evidence of PW-9, one can notice material contradictions. The evidence of Dr. Manisha Ugale, who has examined as PW-8 at Exhibit 81 though speaks about the rupture of hymen, no external injury was noticed on the victim-girl. As such said testimony does not support the prosecution

case. Exhibit 69, birth extract, which is brought on record by PW-5 even if is accepted, still fact remains that there is no material evidence to co-relate the same to victim- girl. That being so, no case for grant of leave is made out. The order of acquittal is very much justified. Leave refused.

(NITIN W. SAMBRE, J.)