

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1312 OF 2019

Arunkumar Dinanath Pandey	]	Applicant
Versus		
The State of Maharashtra	]	Respondent

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Mr. Prashant Pandey a/w Darshit Jain Irfan Unawala, for the Applicant.

Mrs. P.P. Shinde, A.P.P for the Respondent- State.

Mr. Pradip Pagare, A.P.I, L.T. Marg Police Station, Mumbai.

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CORAM : REVATI MOHITE DERE, J.

DATE : 19TH NOVEMBER, 2019.

P.C. :

Heard learned Counsel for the parties.

2. By this application, the applicant has impugned the order dated 26th August, 2019 passed by the learned Additional Sessions Judge, Court Room No.29 Sessions Court, Mumbai, inasmuch as it allowed production of certain articles/documents i.e Exhibit 49 and 50.

3. Learned Counsel for the applicant submits that the learned Sessions Judge ought not to have allowed the production of the pen drive and photographs i.e Exhibit 459 and 50. He submits that the said articles were not part of the charge-sheet. He further submits that no opportunity was given to the applicant before taking the said articles on record and exhibiting them. He further submits that there is non compliance of Sections 202 and 208 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'). According to the learned Counsel for the applicant prior to the production of the said photographs/articles, prosecution had produced a Pen Drive, which was converted into a C.D and played in the Court, however, the said C.D was found to be empty. He submits after the said exercise, the prosecution produced a memory card containing three objectionable videos and objectionable photographs, which were erroneously allowed by the learned Judge, without affording any opportunity to the applicant, for opposing the same. He submits that neither the copy of the said memory card nor copies of the photographs have been served on him.

4. Learned A.P.P opposed the application. The learned A.P.P relied on the evidence of the prosecutrix. She submits that during the course of the evidence of the prosecutrix, the memory card containing three objectionable videos and objectionable photographs were produced and as

such no infirmity can be found in the same. She submits that an opportunity was also given to the learned Counsel for the applicant as is evident from the observations made by the trial court during the recording of the prosecutrix's evidence. She relied on a copy of the order dated 26th August, 2019 which records that an opportunity was given to the applicant's Advocate and that he was heard.

5. Perused the papers. The applicant is an accused who is facing prosecution in connection with C.R. No.414 of 2016 registered with the Parksite Police Station, Mumbai for the alleged offences punishable under Sections 376, 376 (2) (n) , 354 (c), 506 (2), 328 of the Indian Penal Code and Section 67 (A) of the Information Technology Act r/w Sections 4,6,8,10, 12 and 14 of the Protection of the Children from Sexual Offences Act, 2012 (for short 'POCSO'). The prosecutrix is the sister-in-law of the applicant, who was allegedly sexually abused by the applicant. The applicant was arrested in connection with the said offence and after investigation, charge-sheet was filed against the applicant and the case was committed to the Court of Sessions and the trial of the applicant commenced. On 4th June, 2019, the prosecutrix's examination-in-chief commenced. It is during the course of recording of the prosecutrix's evidence, that the prosecution filed two applications i.e Exhibit 49 for

taking C.A reports on record and Exhibit 50 for taking certain articles on record i.e Samsung Company Memory Card and photographs. The said applications at Exhibit 49 and 50 were allowed by the learned Sessions Judge. The learned Sessions Judge has recorded the conduct of the learned Counsel for the applicant, both in the order as well as whilst recording the evidence of the prosecutrix. Grievance of the applicant is that he has neither been given a copy of the said memory card containing objectionable videos nor copies of the objectionable photographs.

6. As noted above, the memory card contains objectionable videos of the prosecutrix and her sister and mother. The photographs are also objectionable. Evidence of the prosecutrix at Page 42 and 43 of the application also shows that the prosecutrix has in detail stated to whom she has given the said memory card and contents of the videos. No infirmity can be found in the order dated 26th August, 2019 taking the said memory card on record as well as the photographs.

7. Needless to state that, it is always open for the applicant to apply to the Trial Court for seeking a copy of the said memory card/photographs. If such an application is filed, the learned Sessions

Judge, to decide the same expeditiously on its own merits in accordance with law. The application is accordingly disposed of.

8. All concerned to act upon the authenticated copy of this order.

[REVATI MOHITE DERE, J.]