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

CRIMINAL WRIT PETITION NO.823 OF 2020

Shivanand Ramgonda Hegaje Patil

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Santosh Kyadiguppi a/w Ms. Pooja Joshi and Mr. Jayesh Bhosle, for the Petitioner.

Mr. A. R. Patil, A.P.P for the Respondent No.1 – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th DECEMBER, 2020

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of Respondent No.1-State.
3. By this Petition, the Petitioner has impugned the order dated 18th November, 2019, passed by the learned Special Judge (POCSO) and Additional Sessions Judge, Sindhudurg, below Exhibit – 32, by which, the

petitioner's application seeking recall of the PW-2 (victim) for further cross-examination, came to be rejected.

4. Learned Counsel for the petitioner submits that a perusal of the cross-examination of PW-2 will go to show that there is absolutely no cross by the petitioner's earlier advocate with respect to the incident deposed to by the said witness in her examination-in-chief. He submits that if the said witness is not recalled, serious prejudice will be caused to the petitioner, who is facing serious charges, not only under the Indian Penal Code, but also under the Protection of Children from Sexual Offences Act ('POCSO' Act'). He submits that the minimum sentence under Section 10 of the POCSO Act, is five years but which may extend upto seven years. He submits that in the interest of justice, the petitioner be permitted to cross-examine the said witness PW-2, only on the point of the incident in question.

5. Learned APP opposes the petition. He submitted that no interference is warranted in the impugned order.

6. Perused the papers, in particular the statement of the PW-2 (victim girl). The victim girl in her examination-in-chief has in detail described the incident in question. A perusal of the cross-examination of the said witness shows that there is no cross-examination done by the then advocate with respect to the incident of sexual abuse. The object of any cross-examination is to elicit the truth. The cross-examination done by the then advocate is cryptic in nature and there is not a single question asked by the said advocate with respect to the incident of sexual abuse. The minimum sentence for the offence under Section 10 is five years under the POCSO Act. No doubt, the incompetency of an advocate cannot be a ground for permitting recall of a witness/witnesses, however, keeping in mind the peculiar facts of this case and in the interest of justice, keeping in mind the right of an accused to a fair trial, the petitioner is permitted to cross-examine PW-2 only on the incident in question. It is not in dispute that the application seeking recall of the said witness was filed before all the prosecution witnesses were examined.

7. Learned Counsel for the petitioner assures that he will conclude the cross examination of PW-2 (victim) with respect to the incident in question, on the day when the witness is produced before the

Court and that he will not seek any adjournment. Statement accepted.

8. Accordingly, the petition is allowed and the impugned order dated 18th November, 2019, passed by the learned Special Judge (POCSO) and Additional Sessions Judge, Sindhudurg, below Exhibit – 32, is quashed and set aside.

9. Rule is made absolute on the aforesaid terms. Petition is accordingly disposed of.

10. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.