

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1507 OF 2019

Kiran Burma	...	Applicant
Versus		
The State of Maharashtra	...	Respondents

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Ms.Priyanka Mali Mr.Mani Prakash, Advocate for the Applicant.

Mr.A.R.Kapadnis, the Additional Public Prosecutor for the Respondent No.1/State.

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CORAM : A.M.BADAR J.

DATED : 24th JANUARY 2020.

P.C. :

1 Order passed on an application Exhibit 37 is impugned in this application. By the said application, the accused sought recall of the victim, who is examined as P.W.No.3 by the prosecution. The said application came to be allowed by the learned Special Judge by imposing cost of Rs.5,000/- and by directing the accused to pay witness Bhatta of Rs.1,000/-. This Order is impugned in the instant application.

2 It is seen that evidence of the victim was recorded in

absence of the accused. He was neither produced from jail nor he appeared before the trial Court by video conferencing. Charges against him are for the offences punishable under Section 376 of the Indian Penal Code, so also under the penal provisions of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for the sake of brevity). The learned trial Court had permitted recall of the victim for a limited purpose.

3 According to the provisions as seen from Sub-section 9 of Section 33 of the said POCSO Act, trial of the offences punishable under the provisions of POCSO Act shall be in accordance with the procedure prescribed in the Code of Criminal Procedure. Section 273 of the Code of Criminal Procedure provides that in every trial witness shall be examined in presence of the accused. In the case in hand, the accused was not present when the victim was examined.

4 In this view of the matter, no infirmity can be found in the impugned Order. The application is dismissed.

(A.M.BADAR, J.)

Raju D.
Gaikwad

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