

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5798 OF 2019

Ritesh Dharmaveer Meharol ... **Petitioner**

Versus

The State of Maharashtra ... **Respondent**

.....

Mr.Indrajeet R. Kulkarni, Advocate for the Petitioner.

Mr.S.V.Gavand, the Additional Public Prosecutor for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 29th JANUARY 2020.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3 By this petition, the petitioner/original accused is challenging the Order dated 26/08/2019 passed by the learned Special Judge and Additional Sessions Judge, Thane rejecting the application under Section 220 of the Code of Criminal Procedure filed by the petitioner/original accused.

4 Heard both sides. It is seen from the record that FIR of Crime No. I-298/2015 registered with Police Station, Vartaknagar, Thane for offence punishable under Section 354 and 507 of the Indian Penal Code as well as under Section 12 of the Protection of Children from Sexual Offences, 2012 (hereinafter referred to as “the POCSO Act” for the sake of brevity) has culminated in registering the Crime and subsequent filing of the charge-sheet in Special Case No.14 of 2016. The very same informant then lodged another FIR with the same police station, which has resulted in registration of Crime No. I-307 of 2015 on 18/05/2015 for the offences punishable under Sections 376, 328, 506 and 504 of the Indian Penal Code and Sections 4 and 12 of the POCSO Act and under Section 67 of the Information Technology Act, 2009. Conjoint reading of the FIR lodged on 15/05/2015 with that of subsequently lodged FIR on 18/05/2015 against the petitioner/accused goes to show that the First Informant alleged that the petitioner/accused had committed penetrative sexual assault on her and then threatened her that he will disseminate the obscene pictures of the First Informant snapped by him by sending those to public at large. In the first FIR averments of the First Informant is mainly in respect of message sent through the mobile phone by the petitioner/accused threatening to publish her obscene pictures and in second FIR by narrating the incident of penetrative sexual assault on her, the First Informant had referred to the threatening by sending message to her by the

petitioner/accused. This shows that the subject matter of both trials is events which took place in one series of acts so connected together as to form the same transaction. Therefore, as per provisions of Section 220 of the Code of Criminal Procedure, petitioner/accused ought to have been charge-sheeted with and tried at one trial for offences involved in both these FIRs and consequent Special Cases. Even Section 33(5) of the POCSO Act makes it clear that the victim of the offence should not be called repeatedly before the Court for adducing her evidence.

5 The impugned Order suffers from illegality as the learned Special Judge has ignored provisions of Section 220 of the Code of Criminal Procedure and was swayed with the fact that the one case is fixed for evidence and another is pending for framing of charge.

6 In this view of the matter, the petition deserves to be allowed and the same is allowed by directing the learned Special Judge to try the petitioner/accused at one trial in respect of both the subject crimes and consequent Special Cases under the POCSO Act.

7 The petition is accordingly disposed of.

(A.M.BADAR, J.)