

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 32 OF 2021

Ramesh s/o Subhash Rathod,
Age 24 years, Occ. Labour,
R/o. Nehru Nagar Tanda,
Tq. Renapur, Diust. Latur. ... **Applicant.**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Renapur Police Station, District Latur. ... **Respondent.**

...

Advocate for the Applicant : Mr. Shinde Shrikrishan S.

APP for the Respondent : Mrs. R.P. Gaur.

CORAM : MANGESH S. PATIL, J.

DATE : 17.02.2021.

JUDGMENT :

Heard both the sides. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this proceeding under Section 482 of the Code of Criminal Procedure the original accused is impugning the order passed by the learned Trial Judge rejecting his application (Exhibit 18) preferred under Section 311 of the Code of Criminal Procedure for recalling the victim (PW.5) and her brother (PW. 6).

3. The applicant is facing charge for the offences punishable under Section 354 A (2), 354 B (1), 326, 323 read with Section 34 of the Indian Penal Code and under Section 7 and 8 of the Protection of Children from Sexual Offences Act. The prosecution examined the victim (P.W. 5) and her brother (P.W. 6) and at that stage the applicant filed the application (Exhibit 18) stating, “some important contradictions and omissions remained to be

put to the witnesses during their cross examination” and sought to recall them.

4. The prosecution opposed the application and by the impugned order the learned Judge rejected the application on the ground that the witnesses were already cross-examined at length and that attempt was being made to fill up a lacuna.

5. I have carefully considered the submissions and the impugned order.

6. The prayer in fact was innocuous. The prosecution had examined the victim and her brother and before any further witness could be examined the application was filed to recall them stating that some questions had remained to be put to make out the contradictions and omissions. It is a right of the accused to defend himself ably. The impugned order seeks to thwart his attempt to defend himself. The impugned order does not disclose as to how any prejudice was likely to be caused to the prosecution on recalling the witnesses and making them face further cross-examination. Even there is no basis as to how the learned Judge could conclude that the questions which were still to be put would be in the nature of filling of some lacuna. He does not point out as to what those lacunae are.

7. In my considered view the learned Judge has not used the discretion properly. The impugned order being arbitrary and capricious is liable to be quashed and set aside.

8. The Application is allowed. The impugned order is quashed and set aside. The application of the applicant (Exh. 18) stands allowed subject to his paying costs of Rs. 2500/- (Rs. Two Thousand Five Hundred only) to P.W. 5 and P.W. 6 each.

9. The Rule is made absolute.

(MANGESH S. PATIL, J.)

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