

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

REVISION APPLICATION NO.38 OF 2021

Sagar Sudhir Sanas ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Jagdish Choudhary i/by M/s. Raj Legal for the
Applicant.

Mr. A.R.Patil, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 7th SEPTEMBER, 2021.

P.C. :

Heard.

2 Applicant is facing prosecution for the offences punishable under Sections 354(D), 143, 336, 323, 504, 506 of Indian Penal Code, 1860 read with Section 11(1)(4), 12 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**' for short). The learned Additional Sessions Judge, Kalyan framed the charge on 15th October, 2020. Charge

No.4 reads as under:

“ Fourthly that you accused nos.1 to 3 on the above mentioned date, time and place were the members of unlawful assembly, in the prosecution of the common object of said assembly i.e., to outrage the modesty of minor victim girl and thereby committed an offence punishable under Section 143 of the Indian Penal Code. ”

3 The learned counsel for the applicant has correctly pointed out that offence was registered and charge-sheet has been filed against three known accused and not, FIVE. For that reason, charge of unlawful assembly could not have been framed. He would rely on the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973, where victim would allege that the three persons subjected her to sexual harassment.

4 In consideration of the facts of the case, the Fourth charge, re-produced here-in-above was clearly unsustainable. It is quashed. To this extent the order dated

15th October, 2020 passed by the learned District Judge-3 & Additional Sessions Judge, Kalyan in Atrocity Special Case No.101 of 2017 is modified.

5 Application is partly allowed and disposed off.

(SANDEEP K. SHINDE, J.)