

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.243 OF 2021

Shubham s/o Rajendra Patil,
Aged about 24 years,
Occ: Service,
R/o Bori Mahal,
Tq. Kalamb, Dist. Yavatmal. **PETITIONER**

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station Ralegaon,
District Yavatmal. **RESPONDENT**

Mr. M.K. Kulkarni, Advocate for Petitioner.
Mr. M.K. Pathan, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **7th APRIL, 2021.**

ORAL JUDGMENT:

Heard Mr. M.K. Kulkarni, the learned counsel for the petitioner and Mr. M.K. Pathan, the learned Additional Public Prosecutor for respondent/State.

2. The petitioner is facing trial under the provisions of the Protection of Children from Sexual Offences Act, 2012 (Act) vide Special POCSO Case 60/2017.

3. The petitioner preferred application Exh.69 for recalling prosecution witnesses PW.1 and PW.2 for further cross-examination. While PW.1 is the alleged victim, PW.2 is her father.

4. The application seeking recall of PW.1 and PW.2 is on the premise that the prosecution was permitted to recall the Investigating Officer for further examination, and it is during such further examination that the lacuna/discrepancy in the name of the petitioner in the medical record is clarified. According to the petitioner, assuming that there was no need to extensively cross-examine PW.1 and PW.2, only a perfunctory or formal examination was conducted.

5. The learned Judge was pleased to reject the application seeking recall.

6. From legalistic perspective, there is nothing seriously wrong in the order impugned. However, it is submitted that after the recording of the evidence the petitioner and PW.2 have married. My attention is invited to the certificate under the Special Marriage Act, 1954, which is placed on record. It is submitted that the petitioner may be permitted to recall PW.1 and

PW.2 for the limited purpose of bringing on record the factum of marriage.

7. I do not see any impediment, in allowing the prayer for recalling PW.1 and PW.2 for further cross-examination, in view of the subsequent development. It is reiterated that while there is no infirmity in the reasoning of the learned Judge who rejected application Exh.69, it is only in view of the submission that the recall is for the limited purpose of bringing on record the factum of marriage, that I am inclined to exercise inherent powers under Section 482 of the Criminal Procedure Code.

8. The order impugned is set aside.

9. PW.1 and PW.2 be recalled for further cross-examination on the limited point of proof of marriage solemnized between the petitioner and PW.1.

10. Rule is made absolute in the aforesaid terms.

JUDGE