

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1390 OF 2022**

Omkar Satish Patil	...	Petitioner
versus		
The State of Maharashtra and Anr.	...	Respondents

Mr. Umesh H. Pawar, for Petitioner.
Ms. Anamika Malhotra, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 5th MAY, 2022

P.C.

1. Heard the learned Advocate for the Petitioner. The challenge in this petition is to the order dated 15th February, 2022 passed by the learned Special Judge, whereby the Application preferred by the Petitioner/accused in Special Case POSCO No.12 of 2021 for recalling the victim for further cross-examination, came to be rejected.

2. The Petitioner is facing trial for the offences punishable under Sections 376, 376(2N), 376(3), 366(A) of Indian Penal Code, 1860 and under Sections 4, 5 (1), 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012. The evidence of the victim, who is 12 years of age, was recorded by the Special Judge. The Petitioner had a lengthy cross-examination of the victim.

3. After the evidence of the Investigating Officer was recorded, the Petitioner preferred an Application to recall the victim contending that there was

ambiguity in the evidence as the victim deposed during the course of cross-examination that she was riding the motorcycle along with the Petitioner and the Investigating Officer deposed that the Petitioner could drive the motorcycle. It was, therefore, necessary to recall the victim for further cross-examination.

3. The learned Special Judge rejected the Application opining interalia that the grounds on which the victim was proposed to be recalled were already covered during the course of cross-examination of the victim and further cross-examination did not seem necessary for a just decision of the case. The learned Judge also referred to the provisions of Section 33(5) of the Protection of Children from Sexual Offences Act, 2012, which proscribes the calling of the child repeatedly, to testify in the Court.

4. The learned Advocate for the Petitioner would urge that in the cross-examination of the victim, there is a discrepancy as regards the person who was driving the motorcycle. Initially, the victim stated that the father of the Petitioner took her on a motorcycle to the police station and later on she corrected herself to state that the Petitioner was driving the motorcycle. It was submitted that it is the case of the petitioner that the Petitioner cannot drive the motorcycle and, therefore, it was necessary to recall the victim for further cross-examination.

4. Evidently, the Petitioner had an adequate opportunity to cross-examine the victim. The alleged discrepancies as to whether the victim was taken to the police station on the motorcycle by the father of the Petitioner or the victim was a pillion

rider on the motorcycle driven by the petitioner, were such which could have been resolved, if desired to by the Petitioner, during the course of the cross-examination itself. The assertion of the Investigating Officer that the Petitioner can drive the motorcycle does not add anything to the alleged inconsistency.

5. Even otherwise, the recall of the victim for the stated purpose for resolving the said inconsistency, does not seem necessary for a just decision of the case. The learned Special Judge was well within his rights in declining to recall the victim for cross-examination. The learned Special Judge rightly adverted to the caution contained in Section 33(5) of the POSCO Act.

6. No case for exercise of extra ordinary jurisdiction is made out.

7. Hence, the Petition stands dismissed.

(N.J.JAMADAR,J.)