

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1471 OF 2021

Taher Ahemad Mohammad Gous Kapathal ...Petitioner
Versus
The State Of Maharashtra ...Respondent

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Mr. Manoj Patil, Advocate for the Petitioner.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 30th JUNE, 2022.

PER COURT:

1. The Petitioner has challenged the order dated 2nd March, 2021 passed by the learned Extra Joint District Judge and Additional Sessions Judge, Ratnagiri allowing the application preferred by the prosecution for re-examination of PW-6.

2. The petitioner is facing prosecution for offence under Section 354-A of Indian Penal Code and Sections 3, 4, 7 & 8 Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The trial had commenced. The evidence of PW-6 was recorded and the said witness was cross examined by the defense. The cross examination was concluded on 2nd March, 2021. At that point of time the application was preferred by the prosecution on the same day seeking re-examination of the witness which was allowed vide order dated 2nd March, 2021.

3. Learned counsel for the Petitioner submitted that the application preferred by the prosecution was vague. There was no reference to which witness to be re-examined. The said application will have to be construed as an application under Section 311 of Cr.PC.. The application was vague since it was not mentioned as to in what circumstance the re-examination of the witness was required. The powers under Section 311 of Cr.PC. cannot be exercised to fill up the lacuna. Certain vital aspects were brought in the cross examination of PW-6 which cannot be wiped up by re-examination. The application was not within consonance of purpose of re-examination. The order passed by the learned Sessions Judge allowing the application preferred by the prosecution does not specify the reasons for allowing the said application. Hence, the said order be set aside. It is also submitted that, by way of interim relief this Court vide order dated 22nd March, 2021 has granted interim protection by ordering that till the next date, the effect and implementation of order dated 2nd March, 2021 passed below Exhibit – 47 is stayed. It was clarified that the stay to the impugned order shall not to be construed as stay to Special Case No.13 of 2019 and the trial Court is at liberty to proceed further with the said case.

4. Pursuant to order dated 2nd March, 2021, the witness PW-6 was re-examined at the instance of the prosecution and re-examination was concluded and thereafter, the witness is also cross examined at the instance of defence on 2nd March, 2021. Thus, the order dated 2nd March, 2021 passed by the learned trial Court which is impugned in this proceedings was given effect. The Court then proceeded with the recording of evidence. The prosecution examined all the witnesses and filed pursis of closure of its evidence. The evidence of two defence witnesses is recorded and the next date before the trial Court is on 2nd July, 2022.

5. Learned APP submitted that the order of re-examination has given effect and the trial Court has proceeded to record the re-examination at the instance of the prosecution and also concluded the cross examination at the instance of defence. There is no illegality in order dated 2nd March, 2021. The trial Court had assigned reasons for allowing the application for re-examination.

6. I have perused the documents on record it is apparent that the examination-in-chief of PW-6 was recorded. Her cross examination was conducted by the Advocate for the accused and on the same day application was preferred by the prosecution for re-examination. Although the application does not specify which

witness should be permitted to be re-examined, the application has to be read with reference to the context and also considering the fact that the re-examination of PW-6 has been recorded. The order dated 2nd March, 2021 passed by the Sessions Court indicate that the witness was crossed on some new facts and to clear the same the application is allowed in the interest of justice. Further elaboration was not called for. It is also pertinent to note that, pursuant to order dated 2nd March, 2021, the witness was re-examined and also cross examined at the instance of defence. Proper opportunity has been given to defence to cross examine the said witness. There is no illegality in impugned order. Writ Petition is devoid of merits and the same is dismissed.

(PRAKASH D. NAIK, J.)