

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

**CRIMINAL WRIT PETITION NO. 2095 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 2096 OF 2022**

Akshay Shivaji Suryawanshi
Versus

Petitioners

1. The State of Maharashtra
2. Usha Vasant Suryawanshi

Respondents

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Mr. Vaibhav R. Gaikwad, Advocate for the Petitioner.

Mr. Arfan Sait, APP for the Respondent - State in
WP/2095/2022..

Mr. S. R. Agarkar, APP for the Respondent - State in
WP/2096/2022..

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CORAM : PRAKASH D. NAIK, J.

DATE : 7th JULY, 2022

PC :

1. The petitioner has challenged order dated 17.05.2022 passed by Extra Joint Additional Sessions Judge, Karad below exhibit-56 and exhibit-59 in Sessions Case No. 9 of 2015 and order dated 17.05.2022 passed by Extra Joint Additional Sessions Judge, Karad below exhibit-45.

2. The respondent No.2 lodged the complaint on 13.11.2014 alleging that her daughter was sexually assaulted by the accused. FIR was registered under Section

323 and 376 of the Indian Penal Code and Sections 3(a), 4 of the Protection of Children from Sexual Offences Act with Umbraj Police Station, District-Satara. Statement of victim girl was recorded. Her medical examination was conducted. Statement of witnesses were recorded. The petitioner was arrested on 14.11.2014. On completing investigation, charge sheet was filed on 08.02.2015. Case is pending before the Court of Sessions at Karad.

3. Charge was framed against the accused. Prosecution examined 8 witnesses. The complainant was examined as PW-1. Victim girl was examined as PW-4. The Investigating Officer was examined as PW-8. His evidence was concluded on 06.04.2022.

4. The petitioner submitted application below exhibit-45 and prayed that the coloured six photographs produced on record by the defence vide application exhibit-39 at article B-1 to B-6 and proved through the evidence of PW-6 Dattatray Kanase in his cross-examination be given exhibit numbers and read in evidence in the present case. This application was preferred on 02.03.2022. The application preferred by the accused was opposed by the prosecution

by filing say on 25.04.2022. In the meantime statement of accused was recorded under Section 313 of Cr.P.C. State filed application below exhibit-56 seeking permission file on record relevant documents on 25.04.2022 along with list of document and document to be filed viz. Birth Certificate of the victim. The prosecution filed another application Exhibit-59 under Section 311 of Cr.P.C. and prayed that principal of school of Helgaon Panchkroshi Datta Vidya Mandir, Helgaon, Taluka Karad, Dist. Satara be summoned with necessary details of admission of victim's record in the school which reveals her birth date. This application was preferred on 25.04.2022. Both applications were opposed by defense on several grounds by filing say.

5. Applications filed by prosecution vide exhibit-56 and 59 were allowed by learned Extra Joint Additional Sessions Judge, Karad and witness summons was issued to principal Panchkroshi Datta Vidyamandir, Helgaon vide order dated 17.05.2022. Vide separate order dated 17.05.2022, application exhibit-45 preferred by accused/petitioner was rejected.

6. Criminal Writ Petition No.2095 of 2022, is preferred by petitioner challenging order dated 17.05.2022 passed by

Sessions Judge, Karad, below exhibit 56 and 59 allowing applications preferred by State. Whereas, Criminal Writ Petition No. 2096 of 2022 has been preferred by petitioner challenging order dated 17.05.2022 passed by Sessions Judge, Karad below exhibit 45 rejecting application by petitioner/accused.

7. Learned advocate for petitioner submitted that the applications were preferred by the prosecution at belated stage. The statement of accused was recorded under section 313 of Cr.P.C.. Prosecution had examined eight witnesses. 'Evidence closed' pursis was filed by prosecution and the case was adjourned for argument. The accused had already disclosed his defense. PW-8 collected bonafide certificate of the victim girl from her school and included in charge-sheet. While examining the prosecution witness and leading evidence, the prosecution decided not to tender on record the bonafide certificate of victim girl issued by private school and also not examined the Head Master of the school to prove bonafide certificate. During investigation, the Investigation Officer did not collect and produce in charge-sheet birth certificate of victim girl. In the cross-examination of PW-8, he has admitted that birth

certificate of victim was not collected. For the first time on 25.04.2022, birth certificate of victim girl issued by Grampanchayat, Dist. Sangli was produced. The intention of the prosecution is to fill up lacuna in the case. The course adopted by prosecution is contrary to provisions of criminal procedure Code. The statement of the new witness was not recorded. The prosecution cannot be allowed to file new evidence. It would cause serious prejudice to accused. The documents did not form part of charge-sheet. Section 207 of Cr.P.C. provide that all the documents are required to be given to the accused along with charge-sheet. The case is at the stage of final arguments. The defence of the accused was that the victim was not minor. The date of birth of the victim was not proved. The Investigating Officer had only collected bonafide certificate of the victim girl and not birth certificate. No person from the school was examined to prove bonafide certificate. The application by state was silent as to who has obtained birth certificate of victim. The investigating Officer did not conduct any further investigation under Section 173(8) of Cr.P.C. It is further submitted that the learned Sessions Judge ought not to have allowed the applications preferred by State. The application preferred by petitioner has been erroneously

rejected by Sessions Court. The victim girl was examined on 18.12.2021. Vide application exhibit-39 dated 18.12.2021, the defense had shown her an inland letter in the handwriting of the victim girl sent by her to the accused by post, when he was in jail. It was disclosed by her in letter that the case is registered by her parents. The accused is acquainted with handwriting of victim girl and identifies her handwriting. The said letter is produced on record with a list attached to application exhibit-39 and has been marked as Article 'A'. During cross-examination of victim girl, the defense has produced and shown to the victim girl all six photographs (coloured) containing images of victim and accused. These photographs were marked as Article B-1 to B-6 by the Court, in the list attached to application Exhibit-39. The victim girl has deliberately refused to identify her handwriting in letter and her images in photographs. PW-6 Dattatray Kanase, who is a Panch witness to the spot panchanama was shown said photographs. He is resident of same village. He has identified images of victim and accused. The photographs needs to be marked as exhibits. The Sessions Court ought to have exhibited the said photographs filed by the petitioner. Advocate for petitioner has relied upon two

decisions of this Court viz. **Nayna Rajan Guhagarkar Vs. State of Maharashtra¹** and **Bhagyashree Prashant Wasankar Vs. State of Maharashtra²**.

8. Learned APP submitted that there is no error in the orders passed by trial Court. The impugned orders were passed by assigning reasons. The prosecution must be given fair opportunity to prove the case. The intention of the prosecution was not to fill up lacuna. The case relates to sexual assault on minor. Learned APP has relied upon the decision of the Supreme Court in the case of **Jarnail Sing Vs. State of Haryana³**.

9. I have perused the documents on record and the impugned orders. I do not find any infirmity in the impugned orders. While rejecting application below exhibit-56 and exhibit-59 the Sessions Court had observed that Section 311 of Cr.P.C. gives power to the Court to summon material witnesses or examine person present. The powers under Section 311 of Cr.P.C. can be exercised at any stage for the just decision of the case. Due to inadvertence of

1 2021 ALL MR (Cri.) 2716

2 2021 ALL MR (Cri) 3030

3 (2013) 7 SCC 263

APP, witness summons was not issued to school authority for proving bonafide certificate of victim. Witness summons was issued to Principal of Panchkroshi Datta Vidya Mandir, Helgaon. Exhibit-56 is for production of birth certificate of victim. The victim is aged about 14 years. She has referred to her birth date in the evidence. In her cross-examination she stated that she herself, sister and brother were born in village Sakhrale. It is necessary to prove the age of the victim by producing birth certificate. Bonafide certificate issued by school in favour of victim girl. From inception, the case of prosecution is that victim is minor. The complaint was lodged by mother of victim girl. The FIR refers to the fact that victim was studying in 9th standard and she was aged around 13 years. The victim in her evidence has given her date of birth as 19.10.2000. She has also stated that she was born at village Sakhrale. In the cross-examination she admitted that she was going to Panchkroshi Vidyamandir in village Helgaon. She denied having taken photographs with accused. She denied that 6 photographs shown to her are her photographs and accused. She denied that the letter shown to her is in her handwriting. While allowing applications preferred by prosecution vide exhibit-56 and 59 it was observed that

prosecution case is that victim is aged around 14 years. Victim has given her date of birth. In cross-examination she stated that she, her sister and brother were born in village Sakhrale. The defense of accused is that birth date given by victim is false. She was major. The incident had occurred after POCSO Act was brought into force. This special statute is for protection of minor victims. It is necessary to prove the age of victim by producing birth certificate. Therefore, it is necessary to allow production of birth certificate. The accused has taken the defense challenging the age and birth date of victim. By production of birth certificate no prejudice would be caused to accused. Section 311 of Cr.P.C. gives power to court to summon the material witnesses or examine person present. Court at any stage of inquiry, trial can summon any person as witness, examine any person present, through not summoned or recall and re-examine any person already examined. In the present case due to inadvertence, witness summons was issued for proving bonafide certificate of victim which was collected by investigating Officer. Hence, it is necessary to issue witness summons to headmaster of Panchkroshi Datta Vidyamandir to prove bonafide certificate of victim. I do not find any illegality in

the order allowing production of document or issuing summons to witness. While rejecting the application preferred by accused vide exhibit-45 it was observed by Sessions Court that the victim did not admit that letter is written by her nor admitted photographs. The accused did not examine himself on oath to prove the fact that letter was issued by victim and handwriting is of victim. Merely on identification of photograph by prosecution witness it cannot be exhibited. Photographs are to be proved through person who had taken the photographs. The learned Sessions Judge has rightly rejected the application by accused by assigning cogent reasons. No ground is made out to set aside impugned orders. The decisions relied upon by learned advocate for petitioner were delivered in the fact of respective cases. The victim had not admitted letter written by her and the photographs. Hence, the petitions are required to be dismissed.

ORDER

(i) Writ Petition No. 2095 of 2022 and Writ Petition No. 2096 of 2022 are rejected and disposed of.

(PRAKASH D. NAIK, J.)