

VRJ

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

CRIMINAL APPLICATION NO.1165 OF 2022

Panjab Yadav Khodke

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Sushil A. Inamdar for the applicant.

Mr. R.M. Pethe, APP for the respondent No.1/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2022

P.C.:

1. The applicant has challenged order dated 2nd July, 2022 passed by the learned Additional Sessions Judge, Khed, Rajgurunagar, District Pune below Exhibit-82 rejecting the application under section 311 of the Code of Criminal Procedure, 1973.

2. In pursuance of First Information Report No.160 of 2019 registered at Narayangaon Police Station, offences under Sections 376, 323, 506 and sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 were registered against the applicant. The learned Special Judge framed charge and permitted prosecution to examine witnesses. The prosecution has examined in all eleven (11) witnesses in support of the case. Learned Special Judge has also recorded statement under section 313 of the Code

of Criminal Procedure.

3. On 6th May, 2022 the applicant filed an application below Exhibit-82 under section 311 of the Code of Criminal Procedure to recall PW-1 to PW-11. The substance of the averments made in the application is that the cross-examination conducted by the advocate for the applicant is not proper.

4. Learned Special Court by impugned order rejected the application holding that the advocate for the applicant had cross-examined the witnesses at length. Learned Special Judge relying on the judgment of the Apex Court in the case of **State (NCT of Delhi) Vs. Shiv Kumar Yadav** reported in (2016) 2 SCC 402 observed that the change of advocate is no ground to allow application under section 311 of the Code of Criminal Procedure.

5. On perusal of the impugned order, in my opinion, learned Special Judge has assigned logical reasons for rejection of application under section 311 of the code of criminal procedure. The reasons in the impugned order cannot be termed as perverse. There is no miscarriage of justice.

6. The Secretary of Maharashtra State Legal Services Authority shall pay charges of the advocate for the applicant as per the rules.

7. The criminal application is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)