

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

CRIMINAL WRIT PETITION NO. 106/2022.

Laxman Mahadeo Ajankar

-VERSUS-

The State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.M.Awachat, Advocate for the Petitioner.
Ms.T.Khan, A.P.P. for the Respondent.

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CORAM : VINAY JOSHI, J.

DATE : JUNE 10, 2022.

Heard learned Counsel for the parties.

2. The petitioner/accused has challenged the order dated 24.11.2021 passed by the Special POCSO Court, whereby the application for recall of witness came to be rejected.

3. It is argued that there are certain ambiguities and for just decision of the case recall is necessary. The learned Counsel appearing for the petitioner/accused would submit that the mother of the victim has categorically admitted that she desires to settle the

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matter, however, said question was not put to the victim and therefore, recall is necessary.

4. After framing of the charge, the Special Court has examined P.W.1 – mother of the victim on 20.01.2021, which was followed by recording evidence of minor victim on 20.03.2021. After gap of 5 months, the petitioner has filed an application Exh.24 before the Special Court seeking recall of the victim in terms of Section 311 of the Code of Criminal Procedure.

5. Perusal of the said application indicates that without specifying the reasons in generality it has been mentioned that there are some ambiguities in the evidence of the victim and therefore, some important questions are to be asked. However, it is not specified as to what were the ambiguities and what would be the nature of questions, therefore, the trial Court has rejected the application for recall.

6. This Court has specifically put a query to the learned Counsel for the petitioner to demonstrate as to what is the ambiguity to be got cleared by recall of the witness. At this juncture, the learned Counsel for the

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petitioner submitted that the mother of the victim in her evidence has admitted that she desires to settle the dispute. On that point, he has canvassed that the said aspect remained to be asked to the victim, and therefore recall.

7. I am afraid to accept said contention because the efforts of settlement are not in accordance with the law, as well as it amounts to interference in the administration of justice. In case of sexual violence pertaining to minor, the law does not permit to settle or compound the case, and therefore, whatever answer, even if given, by the victim would be of no avail. The victim girl was thoroughly cross-examined prior to 6 months from seeking of the recall. The Special Statute i.e. Protection of Children from Sexual Offences Act, 2012 has specifically cautioned by incorporating Section 33[5] that the Court shall ensure that the child victim shall not be called repeatedly to testify in the Court. Unless there exists some substantial reason, for mere asking the witness cannot be recalled. The reason canvassed for recall is wholly untenable.

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8. The learned Counsel for the petitioner while pressing the urge for recall places reliance on the decision of Madras High Court in case of **Shivanandan .vrs. State (Criminal O.P.No.7439/2021 dated 08.06.2021)**.

9. Being distinct facts, I respectfully disagree with the view taken in the said case. Petitioner has failed to make out a case for recall of witness. In view of the matter Writ Petition being devoid of merits, stands dismissed. No costs.

JUDGE