

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

CRIMINAL WRIT PETITION NO. 400 OF 2022

Bhimraoji Manikraoji Dhole, aged 65
years, Occ. Pan Kiosk, R/o Yangaon,
Karanja, District – Wardha.

... **PETITIONER**

VERSUS

1. State of Maharashtra,
Through Police Station
Officer, Police Station, Karanja
Dist. Wardha.
2. XYZ, The victim, FIR Crime No.
0336/2019, Police Station,
Karanja, District – Wardha.

... **RESPONDENTS**

Shri Rohit Joshi, Advocate a/w Shri Madhur Deo, Advocate for
the petitioner.
Shri H.D. Dubey, A.P.P for respondent no.1-State.

CORAM : **VINAY JOSHI, J.**
DATED. : **30.06.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties. Since the issue involved was limited, I do not deem it necessary to issue notices to the victim.

3. The short challenge has been raised by the petitioner-accused to the remarks endorsed by the Trial Court on 05.05.2022 while recording the evidence of prosecution witness No. 5, who is a Teacher of Deaf and Dumb School. It is also canvassed that the Trial Court has desisted the petitioner-accused to fairly conduct further cross-examination. It is argued that subject to relevancy, the accused has every right to cross-examine prosecution witnesses to elucidate the truth, which would be helpful for raising his defence.

4. It is a case of sexual assault on minor deaf and dumb victim girl aged 8 years. Besides other witnesses, prosecution has examined PW 5, who is a Teacher of Deaf and Dumb School. The witness has stated in his evidence that the victim girl was unable to understand even a sign language, likewise the victim has not responded to the signs and therefore, her statement was not

recorded. In fact, there was no incriminating material against the accused.

5. Learned Counsel appearing for the accused still chosen to cross-examine the witnesses and put some questions. The learned Trial Court observed that the learned Counsel appearing for the accused was unnecessarily putting irrelevant questions and therefore, he has been reprimanded. Since the Trial Court expressed displeasure, the learned Counsel vide Pursis dated 05.05.2022 has declined to conduct further cross-examination. Though the petitioner has prayed for recall of witness, however, it is evident that there is nothing incriminating against the accused. In these circumstances, there is no propriety in recalling the witnesses that too when the accused himself has declined to cross-examine by filing Pursis.

6. As regards to the impugned remarks are concerned, it is submitted that cross-examination was on the line of elucidating some material, which may be helpful for the defence. Undoubtedly, it is total discretion of the Trial Court to decide the relevancy of questions put to the witnesses. If the Trial Court finds that the questions are totally irrelevant, then he would have mention those questions in the evidence with a remark that these are disallowed.

However, at this stage, there is no material to find as to what sort of irrelevant questions are put. The learned Trial Court has expressed that if the defence put further irrelevant questions then suitable action would be taken. In fact, the Trial Court would have kept self-restraint while making such a remark against the Counsel. He would have simply recorded the question and declined to put the said question. Anyhow, the unwarranted remarks have no bearing at all.

7. In view of the above, petition stands disposed of. In the circumstance, the remark put by the Trial Court in the evidence of PW 5 is quashed and set aside. As regards to the prayer for transfer of Sessions Case, the petitioner is at liberty to apply under Section 408 of the Code of Criminal Procedure, which would be decided on its own merits.

8. The petition stands disposed of.

(VINAY JOSHI, J.)

Trupti