

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

CRIMINAL WRIT PETITION No. 380/2022.

Jagdish Pardeshi Rathor,
Aged about 32 years, Occupation
Labour, resident of Abhyankar Squire,
Itwari Peth, Umred, District Nagpur.
(In jail - Central Prison, Nagpur.)

... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
through P.S.O., Umred,
Nagpur.

2.X.Y.Z. in Crime No.315/2021
registered at P.S.O. Umred.

... **RESPONDENTS.**

Mr. A.S.Band, Advocate for the Petitioner.
Mr.S.M. Ukey, Addl. P.P. the Respondent No.1.
Service of Notice on Respondent No.1 is dispensed with.

CORAM : VINAY JOSHI, J.

DATE : JUNE 21, 2022.

ORAL JUDGMENT :

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Heard learned Counsel for the petitioner and respondent no.1. Considering the controversy involved, notice to respondent no.2 is dispensed with. With consent of the learned Counsel present for the parties, the matter is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petition raises a challenge to the rejection of application for recall of witness by the trial Court vide order dated 18.05.2022. It is argued by the learned Counsel for the petitioner that the petitioner, facing trial under Special Act has moved an application (Exh.37) seeking recall of P.W.1 – mother of the victim under Section 311 of the Code of Criminal Procedure.

3. It is further argued that though the mother of the victim [informant] was cross-examined, however as the copy of statement recorded under Section 164 of the Code was not made available on the same date, certain contradictions have not been brought on record. It is the submission that due to belated disclosure of 164 statement, the petitioner did not get proper opportunity to consider

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the same and put it to the witness to prove contradictions.

4. With the assistance of the learned Counsel present for the parties, I have perused the record. It reveals from the evidence of P.W.1 [informant] that during cross-examination a general suggestion was given that whatever is stated by the witness in Exh.22 [Statement under Section 164 of the Code] is false. Infact, in order to prove the omissions and to establish contradictions, specific portion of prior statement of the witness has to put to her during cross-examination.

5. The Court is invested with wide powers to recall the witness. It is apparent that though the statement under Section 164 of the Code was made available, however, the contradictions were not brought on record. The victim girl is already examined by the trial Court. The learned Counsel for the petitioner states that the witness [informant] would be cross-examined for limited purpose and there would be no prejudice, rather it would be to further fair trial. Having regard to the above facts, following order is passed.

ORDER

- [a] Writ Petition is allowed.
- [b] The impugned order dated 18.05.2022 passed by the Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court), Nagpur below Exh.37 in Special Cri.Child Case No.373/2021 is hereby quashed and set aside.
- [c] The application Exh.37 stands allowed to the limited extent of only bringing contradictions on record from the informants statement recorded in terms of Section 164 of the Code of Criminal Procedure.
- [d] The petitioner shall cross examine the witness on the date of first appearance of the witness and if he remains absent or seeks adjournment, his right to recall shall stand forfeited.
- [e] Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE