

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

CRIMINAL REVISION APPLICATION NO. 264 OF 2022

Chandrashekhar Ramlal Bind
Aged 26 years, Occ: Nil,
R/o. C/o Nirmala Jivtode,
Vidya Nagar Lane.2,
Jaripatka, Nagpur (in jail)

...APPLICANT

---VERSUS---

State of Maharashtra,
Through Police Station, Wadi,
Nagpur

...NON-APPLICANT

Shri R.H. Rawlani, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant/State.

CORAM : G.A. SANAP, J.
DATE : NOVEMBER 25, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith.
2. Heard learned advocate for the applicant and learned APP for the non-applicant/State. Perused the record and proceedings.
3. It is the grievance of the applicant that at the time of recording evidence of the PW12-Ajit Kokare (Chemical Analyzer) via video conferencing, the voice of witness was not properly

audible therefore certain mistakes have occurred in the examination-in-chief. It is submitted that due to the mistakes exact wording of the opinion/result of analysis mentioned in the CA report has not come on record. It is submitted that therefore on the very next day, on receipt of the copy of the evidence, an application was made before the learned Additional Sessions Judge and permission was sought to recall the PW12 for further examination. Learned Judge was pleased to reject the application. Against this order, the revision has been filed.

4. It is submitted that the facts stated in the examination-in-chief on oath by PW12 are not consistent with the actual wordings used in the CA report with regard to the result of the analysis. Learned advocate for the applicant submits that therefore learned Judge ought to have granted the application and recalled the witness.

5. Learned APP submits that the witness was thoroughly cross-examined. No case is made out to recall the witness.

6. It is undisputed that the evidence was recorded via video conferencing. A categorical statement is made in the application that voice of the applicant was not properly audible. It can be seen on

perusal of the evidence of PW12 that the exact words mentioned in the CA report have not been recorded in examination-in-chief. In my view, the application made by the applicant-accused was an opportunity to the prosecution to rectify the mistake, if any has occurred. On perusal of the evidence of PW12 and the result of analysis mentioned in the CA report, I am of the opinion that an opportunity deserves to be granted to the applicant-accused to cross-examine the witness on this limited point. Accordingly, the following order:

ORDER

- i. The application is allowed.
- ii. The impugned order dated 22.07.2022 passed below Exh.92 in Special Criminal Child Case No.44 of 2019 by the learned Extra Joint Additional Sessions Judge (Special Judge POCSO Court), Nagpur is set aside.
- iii. The application filed below Exh.92 for recall of PW12 is allowed.
- iv. It is made clear that after cross-examination, the re-examination can be conducted in the peculiar facts of this case obtained on record.

- v. It is made clear that if a request is made by the learned APP for re-examination, learned Judge shall consider it liberally.
- vi. The application stands disposed of.

JUDGE

Wagh