

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

942 CRIMINAL APPLICATION NO.3119 OF 2022

**SANDEEP SURYABHAN TAGWALE (SONAWANE) AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Vijay Bhalerao Patil, Advocate for the applicants
Mr. A. R. Borulkar, Advocate for the respondent No.2

CORAM : KISHORE C. SANT, J.

DATE : 19th JANUARY, 2023

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1. Heard the learned advocates for the parties.
2. This application is filed challenging an order passed below Exh. 27 dated 23-08-2022 passed by the learned Special Judge (Fast Track Court), Jalgaon in Special Case (POCSO) No. 12/2018. The learned judge disallowed the question put to mother of the victim in cross examination in respect of suicidal tendency in the family of the mother of the victim.
3. The facts of the case are that the victim had lodged a complaint with Jamner Police Station for the offences punishable under Section 354, 354(b), 448 and 114 of the Indian Penal Code. During investigation it transpired that the victim was a minor and therefore Sec. 7 & 8 of POCSO also

came to be added.

4. The present applicants are being prosecuted for the said offences. During the course of the trial mother of the victim is examined by the prosecution as PW-3. In the cross-examination a question is put to her that sisters of this PW-3 committed suicide and her brother had attempted to commit suicide twice by consuming the pesticides. The learned Special Judge found that the question is not relevant in view of the charges framed against the applicants. The case was only for sections 354, 354(b) of the IPC and Section 7 & 8 of the POCSO and not in respect of Sections 306 or 309 and disallowed the question. The applicants therefore, filed an application below Exh.27 requesting the court to grant some time as the applicants want to move the High Court. However, the learned trial judge rejected that application and directed to complete the cross-examination. It is this order that is under challenge. This court while issuing a notice had granted stay to the proceeding by order dated 06-10-2022 to the proceeding. It is submitted that in spite of the stay, the learned trial judge insisted the applicants to complete the cross-examination. A specific application therefore was filed below Exh.31 by the applicants. However, same came to be rejected. Say was filed by the learned APP stating that during the course of the trial, the advocate for the accused had orally stated that the accused are not intending to file any proceeding before this court. The learned court below observed that in view of that further witnesses were called and observed

that those two witnesses were present in the court. However, these witnesses were discharged subject to deposit of witness bhatta of Rs.50/-.

5. The learned advocate for the applicants vehemently argued that whether the question is relevant or not can be decided only at the stage of hearing of the case. It cannot be decided immediately at this stage when question is being asked. It is the submission that looking to the subsequent conduct of the victim this question was necessary. He further pointed out that question is not put to the victim but to the mother of the victim and therefore, it ought to have been allowed. He submits that prejudice would be caused to the accused since the relevant question is not allowed to be put to the witness in the cross-examination.

6. Learned advocate for respondent No.2 vehemently opposes the application stating that charge is not framed under Section 309 of the IPC. The alleged incident of trying to commit suicide has nothing to do with earlier incident which prosecution has to prove in the trial. Even if the question is answered, it hardly affects the case and case is about earlier incident than alleged act of trying to commit the suicide. He further submits that question was asked to the mother of the victim about suicide of the sister of the mother of the victim and attempted to commit of suicide by brother of the mother of the victim. Thus, in any case that cannot be said to have any effect

on the case of the prosecution.

7. Learned APP also vehemently opposes the application saying that question as regards attempt to commit suicide was not factual issue and therefore, at any rate it cannot be said to be relevant question and the learned court has rightly passed an order.

8. After hearing the submissions this court finds that allegations were only that accused had committed offence under Section 354, 354(b), 448 and 114 of the IPC and Sections 7 and 8 of the POCSO Act. There is no allegation in respect of Section 309. This court does not find any merit in the application. However, looking to the order passed by the learned trial judge dated 28-09-2022, it is seen that though the order granting stay was produced before the court passed by this court, it was necessary to allow the application below Exh.31 filed by the accused.

9. From the application below Exh. 27, it is clearly seen that the accused had filed an application stating that they want to file appropriate proceeding in the High Court. Thus, there was no question of making observation that orally advocate for the accused have submitted that they are not approaching this court & further cost was also imposed upon the accused person. Observations are thus redundant and court should have immediately acted on the order passed by this court granting

stay without making any observations or any comments. To this extent this court thinks that certainly these observations are uncalled for. Taking into consideration the submission and material before this court, this court has already observed that no case is made out to cause interference in the application, same is therefore rejected.

10. Learned advocate Mr. Borulkar was appointed through Legal Aid and he is entitled to receive fees of Rs.15000/-.

11. At this stage the learned advocate only prays that not only that question is disallowed but further right to cross is forfeited. He assures that he will complete the cross in one day. Subject to that impugned order below Exh.27 dated 23-08-2022 is quashed and set aside. Advocate for the accused would complete the cross of PW-3 within a day.

[KISHORE C. SANT, J.]