

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 207 OF 2019

The State of Maharashtra
Through : The Police Station Officer,
Sangamner Taluka Police Station,
Tq. : Sangamner, Dist.Ahmednagar.

... Applicant
(Ori. Complainant)

Versus

Kanifnath Shankar Pansare
Age: 47 years, Occu.: Nil,
R/o. Waghapur, Taluka : Sangamner,
Dist. Ahmednagar.
At Present – R/o. Near Tambe Hospital,
Tq. : Sangamner, Dist. Ahmednagar.

... Respondent
(Ori. Accused)

. . .
APP for Applicant : Mr. R. V. Dasalkar
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 4th JANUARY, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. State is seeking leave to file appeal by invoking provisions under section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.), i.e. leave to file appeal against the Judgment and order dated 29.07.2019, passed by the Additional Sessions Judge, Sangamner in Special Case No.23 of 2017, which was tried for commission of offence punishable under sections 377, 506 of Indian Penal Code (IPC) and under sections 6, 4, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. According to learned APP for State, there were accusations for commission of above offences against one Kanifnath Pansare, who was posted as a teacher in Haribhau Sangle Yashwant Vidyalaya situated at Nimon, Taluka Sangamner, District Ahmednagar. Crucial witnesses are PW-2, PW-3 and PW-7. They clearly deposed before the trial Court that as to how they were victimized and sexually exploited by accused. The Investigating Officer had collected strong evidence against accused. That, prosecution has successfully established the case against the accused by leading cogent evidence. However, according to learned APP, the said evidence was not properly appreciated by the learned trial Judge, who reached to a conclusion that no offences under section 377 of Indian Penal Code and sections 4 and 6 of POCSO Act are made out.

3. It is pointed out that direct evidence was available which was sufficiently corroborated. However, the same was not properly considered and minor infirmities and discrepancies were taken into account for disbelieving the prosecution case and therefore, the State intends to file appeal and hence the prayer to seek leave for the same.

4. After hearing the learned APP and on going through the record, judgment and order of the trial court, it is emerging that the accused was booked for above offences by Sangamner Taluka Police Station and charge-sheet was filed against the accused in the Sessions Court. The Additional

Sessions Judge, Sangamner, who was seized with the sessions case, conducted trial. It is further emerging that there were accusations that the accused was employed as a Teacher. According to prosecution, he used to take students with him on some or other pretext and used to indulge in sexually exploiting them by issuing threats to reduce their marks if they disclose the fact to anyone. The child victims, who were said to be exploited, were examined before the trial court. They were also cross examined. It seems from the judgment that in all nine witnesses were examined by the prosecution and reliance was placed on documentary evidence.

5. Informant (PW-1) did not support prosecution. Likewise, PW-2 - victim No.1 also did not support prosecution and they flatly denied having made any statements against accused before the police. Evidence of PW-1 is found to be silent about carnal or penetrative sexual assault. Likewise, victim No.2 i.e. PW-3 also did not state before the police about accused committing carnal intercourse or penetrative sexual assault. Therefore, learned Judge found that it was unsafe to rely upon testimony of such witnesses. However, victim No.3 (PW-7) testified that accused opened the chain of his pant and made the child to take his penis in the mouth and when the child refused, he threatened. Therefore, this witness (PW-7), who was victim No.3, had stuck up to his version as regards to sexual harassment. Consequently, learned trial Judge seems to have found satisfactory evidence against the accused for

committing offence under section 12 of POCSO Act and therefore sentenced him to suffer rigorous imprisonment for three years as well as for committing offence under section 506 of IPC and was also convicted for the said offence.

6. Here, learned APP had laid much stress on PW-3 and PW-7 regarding commission of offence under section 377 of IPC. When this court raised a query as to whether there is supporting medical evidence, learned APP candidly answered about its non-availability. Therefore, with such quality of evidence, when crucial evidence for establishment of section 377 is not available on record, proceeding ahead with appeal against acquittal would be a futile exercise. Learned trial Judge seems to have correctly appreciated the evidence and having found that prosecution has made out an offence under section 12 of POCSO Act and section 506 of IPC, convicted the accused and awarded sentence for the same. Required ingredients for attracting remaining sections, including section 377 being patently missing, there is no case made out for grant of leave to file appeal. Therefore in the totality of circumstances, we are not inclined to grant leave and hence the application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)