

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2143 OF 2023**

Madhavi Ramdas Lonare	.. Petitioner
Versus	
The State of Maharashtra	.. Respondent
...	

Ms. Divya Parab i/b Mr. Abhijeet F Khade for the Petitioner.
Mr. Rahul Khot for respondent.
Mr. S.S. Holke, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 23rd AUGUST, 2023**

P.C:-

1 The present writ petition is filed by the petitioner assailing the order dated 29/04/2023, passed by the Additional Sessions Judge, Kolhapur, rejected the application filed, seeking her re-examination.

The application filed and exhibited as exhibit-148 came to be filed by the victim on 19/04/2023 and infact it is a communication addressed to the learned Judge and the subject mentioned, is the change in her deposition.

2 The applicant is a victim, who had lodged a complaint to the concerned police station on 13/07/2020 against two accused persons alleging that she was subjected to sexual assault between the year 2017 and 2019 and this resulted in invocation of Section 376, 506 r/w 34 of IPC and section 4, 8

and 12 of the Protection of Children from Sexual Offence Act, 2012. The victim was referred for medical examination and the report referred to multiple old heal hymenal tears.

3 The accused persons being subjected to trial, the victim entered into the witness-box and her cross-examination was completed on 25/11/2022.

On 5/01/2023, she filed an application for recalling her in the witness-box and it is informed that, when this application was filed, she was in the child remand home.

On 23/03/2023, she made a request to the learned Judge, that she is not desirous of pressing the said application and her evidence recorded on 25/11/2022, shall be considered as valid, as a result the application filed by her was not pressed.

The Additional Public Prosecutor had submitted the response to the application filed by the victim and supported the case that she should be recalled and re-examined for just decision of the case.

4 Once again on 19/04/2023, the victim moved the application, where she stated that she was constantly followed by the father of the accused persons, who threatened her. It is her submission that she was asked to write a letter, which she scribed in her friend's handwriting and was even offered money and but since she was not ready to grant any favour to the accused, though she accepted the money, she left it in a temple.

Certain other instances are also narrated in the complaint, which prima facie in my view do not inspire

confidence and this was the reaction of the learned Judge, who did not find merit in the said application and specifically recorded, that she had not pressed the earlier application filed at exhibit-109 and though she had made reference to the threats given to her, she never spoke about this, when she was under examination and also when she gave a statement in writing on 23/03/2023.

5 On discerning a scope of Section 311 of CrPC, i.e. power to examining the person in present and for recalling witnesses and re-examine such witness, the Additional Sessions Judge has recorded the conclusion as under:

“In the present case nothing is contained in the cross examination of the victim against her evidence in chief which could be explained or made clear by re-examination of the victim vide Section 138 of the Evidence Act or Section 311 of Cr.P.C.”

6 Even, I do not find any merit in the application since her approach is not bonafide, as the victim had earlier turned hostile and now claim that she was coerced to do so, on account of the threats administered to her by the father of the accused persons. This is nothing but an attempt on her part to go back on her testimony, which is impermissible on ground of change of heart.

Hence, the application, being frivolous do not warrant consideration & is rejected.

(SMT. BHARATI DANGRE, J.)