

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION**

CRIMINAL APPEAL NO. 359 OF 2022

Pooja Suresh More
V/S

...APPELLANT

Sujit Madhukar Patil & Anr.

....RESPONDENTS

Mr. Sachin B. Thorat for the Appellant
Mr. A. R. Kapadnis, APP for respondent-state .

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 8th FEBRUARY, 2023

P.C.:

1. Respondent no. 1-accused was prosecuted vide Special Case (POSCO) No. 271 of 2016 before the Special Judge (POSCO) and Additional Session Judge, Thane. The respondent was charged with offence punishable u/s. 376(2)(n), 354(D)(1)(i), 341, 323, 504, 506 of Indian Penal Code and offence u/s. 3 punishable u/s. 4 and section 11 punishable u/s. 12 of Protection of Children from Sexual Offences Act, 2012 & Section 67(A) of I.T. Act.

2. The prosecution story is, the complainant, victim lodged a complaint on 03/08/2016 alleging that she was studying in 10th standard and the accused person in June, 2014 sexually exploited the victim. Based on the complaint dated 03/08/2016 aforesaid

prosecution came to be initiated. Accused claimed to be acquitted of the aforesaid charges vide order impugned dated 23/06/2021. As such, present appeal against conviction u/s. 372 of Cr.P.C.

3. The contentions of learned counsel for the appellant are, the Court below has failed to appreciate the presumption provided u/s. 29 of the provisions of POSCO Act. According to him, from the testimony of P.W. No. 1-victim so also her father P.W. No. 2 the initial burden was duly discharged. Learned counsel for the petitioner would urge that once initial burden is discharged, the Court ought to have accepted the testimonies of P.W. No. 3 and P.W. No. 4, who have stated about the allegedly circulation of photographs by accused person. He would urge that delay in lodging FIR was duly explained by P.W. No. 1. However, the Court below has failed to appreciate the same. In view of above, he would urge that Court must consider the appeal of the victim.

4. Learned AGP would support the submissions made by learned counsel for the appellant.

5. With the assistance of respective counsels, we have appreciated the submissions in the backdrop of observations made by the Special Court. The victim (P.W. No. 1) and her father (P.W. No. 2) were examined at Exhibit-8 and Exhibit-18

respectively. P.W. No. 3, a friend of victim was examined at Exhibit-21 and P.W. No. 4 cousin brother of victim was examined at Exhibit-22.

6. The fact remains that the testimony of P.W. No. 1 and P.W. No. 2 is in relation to an incident of sexual assault, which has occurred in June, 2014 for which the complaint was lodged on 03/08/2016. The fact remains that there is almost a delay of more than 2 years in lodging FIR.

7. Apart from above, the Court below has already considered the testimony of P.W. No. 1 and has noticed that the victim has lodged a complaint in view of the disclosure as regards the circulation of photographs of victim by accused, which was received on the mobiles of P.W. No. 3 and P.W. No. 4.

8. Even if P.W. Nos. 3 & 4 have stated about receipt of alleged photographs, still the prosecution has failed to prove that it is the accused who has forwarded or circulated such photographs of victim being custodian of the same. In this background, the prosecution has failed to establish that it was accused who has circulated the photographs of the victim. Apart from above, the appreciation of evidence of P.W. No. 5, a Doctor has been duly looked into by the Court below and the findings are recorded that

there was sexual assault on the appellant, victim girl however other evidence in the form of extract of the register of the lodge and other incriminating material was not proved by the prosecution to bring home the guilt of the respondent-accused.

9. In this background, it has to be recorded that the view expressed by the Special Court appears to be justifiable and possible view. That being so, no case for interference is made out.

10. The appeal as such fails and stands dismissed.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)