

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 371 OF 2023

Chandrappa Ramesh Kengar ...Applicant

Versus

The State Of Maharashtra ...Respondent

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Mr. Tanvi Tapkire, Advocate for Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

Ms. Sharadha Sawant, Appointed Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th JULY, 2023.

PC.:-

1. The Applicant is facing prosecution for offence under Sections 363 and 376 of Indian Penal Code (for short 'IPC'). The trial has commenced. The prosecution examined eight witnesses.

2. The Applicant preferred an application for recall of PW-5 Vinayak Mahadevrao Shinde who has recorded the statement of the victim under Section 161 of Cr.PC. It was contended that during the cross-examination of victim before the Court several omissions and contradictions were brought on record. However, while recording evidence of PW-5 the learned Advocate who represented the Applicant has not conducted the cross-examination effectively and not proved the contradictions or

omissions. The learned Judge however rejected the application under 311 of Cr.P.C. on the ground that the Applicant had sufficient opportunity to bring on record contradictions or omissions during the cross-examination of PW-5.

3. Learned Advocate for the Applicant submitted that the evidence of PW-1 (victim) indicate that there were several omissions which were brought on record during her cross-examination. However, on the date of recording of evidence of PW-5 junior Advocate had appeared for the Applicant and the witness could not be effectively cross-examined to bring on record the contradictions or omissions.

4. Learned APP submitted that allowing the application at this stage would amount to filling up lacuna. The Applicant had opportunity to cross-examine the witness. The witness was already cross-examined. Learned Advocate for Respondent No.2 reiterated the submissions of learned APP.

5. It is pertinent to note that the trial is not over. The investigating officer is yet to be examined. From the deposition of PW-1 it does appear that there were several contradictions and omissions which were not brought on record during the cross-examination of PW-5. The Applicant is facing serious charge and in the interest of justice and fair trial opportunity has to be given to the Applicant to further cross-examine PW-5. Hence, it would be appropriate to recall PW-5.

ORDER

- i. Criminal Application No.371 of 2023 is allowed;
- ii. Order dated 12th January, 2023 passed by learned Extra Joint District Judge and Additional Sessions Judge, Sangli in Special Case (POCSO) No.79 of 2019 is set aside.
- iii. The application preferred by the Applicant (Exh.54) seeking permission to recall PW-5 for cross-examination is allowed.
- iv. The trial Court shall pass appropriate direction recalling PW-5 permitting the Advocate for the Applicant to further cross-examine the said witness.
- v. Application stands disposed off.

(PRAKASH D. NAIK, J.)