

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

CRIMINAL APPLICATION NO. 699 OF 2023

Atul Kumar Shukla	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Ms. Roli Singh h/f Anand Upadhyay, Advocate for the Applicant.

Mr. Y. Y. Dabake, APP for the Respondent – State.

Mr. R. R. Wagh, (P.S.I.) Marine Drive Police Station, present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 6th JULY, 2023.

PER COURT:

1. The applicant is facing prosecution under Sections 7 & 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The prosecution examined all the witnesses and the case is now due for recording of statement under Section 313 of Cr.PC. After the evidence of investigation officer was recorded, the applicant had preferred an application before the trial Court under Section 311 of Cr.PC. for recalling witness No.1 (victim). The said application has been rejected vide order dated 06.03.2023.

2. Learned Advocate for the Applicant submitted that, in the interest of justice it is necessary to recall PW-1 for further cross

examination of the said witness. The victim was major at the time of recording her evidence. Some relevant questions are required to be put to the said witness by conducting further cross examination. Hence, the order rejecting application preferred by the applicant seeking recall of PW-1 may be set aside.

3. Learned A.P.P submitted that the evidence of all the witnesses was recorded. The case was due for recording the statement of accused under Section 313 of Cr.PC. No ground is made out to recall PW-1.

4. From the documents annexed to this application it is apparent that the evidence of PW-1 (victim) was concluded on 22.11.2021. Thereafter the prosecution examined other witnesses. The evidence of the investigating officer was concluded on 20.07.2022, it appears that the application under Section 311 of Cr.PC. was preferred in 2023. The impugned order indicates that the submission of learned Advocate representing the applicant before the trial Court is that, after deposition of witness No.1, other prosecution witnesses have not supported the prosecution case. Hence, it is necessary to confront PW-1 with some relevant questions. The learned Judge has observed that the victim was thoroughly cross examined by the Advocate for the accused. She

cannot be recalled casually. The question of confronting the witness now does not arise.

5. I do not find any infirmity in the impugned order passed by the learned Sessions Judge. Apparently the application was preferred after the prosecution has examined all the witnesses on the ground that the other witnesses have not supported. No ground is made out to recall PW-1 in exercise the powers under Section 311 of Cr.P.C.

ORDER

Criminal Application No.699 of 2023 stands rejected and disposed off.

(PRAKASH D. NAIK, J.)