

GRM

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

CRIMINAL WRIT PETITION NO. 3524 OF 2022

Gitesh Pradeep Lokare ... Petitioner

V/s.

The State of Maharashtra ... Respondent

A. S. Khandeparkar a/w Rohit P. Mahadik a/w Rushikesh G. Bhagat
i/b Khandeparkar & Associates, Adv. for the Petitioner.

Mr. A. R. Patil, APP for the State/Respondent.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 15, 2023

P.C. :

Heard.

2. The challenge in this writ petition is to the order dated 02/08/2022 passed by learned Sessions Judge, Sindhudurg-Oros rejecting the application Exhibit-44 in Criminal Appeal No. 2/2017. The petitioner herein is the appellant in the said proceeding i.e. Criminal Appeal No. 2/2017, pending before the Court of Sessions, Sindhudurg-Oros. It is an appeal from conviction. The petitioner has been convicted for the offence punishable under Section 354 of the Indian Penal Code, 1860 and therefore, sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 2,000/-, in default to suffer simple imprisonment for 15 days.

3. The petitioner preferred an application Exhibit-44 seeking

permission to adduce evidence in the nature of photographs, wherein he is seen along with the victim. It is the case of petitioner that there was emotional relationship between him and the victim. The evidence sought to be adduced is very much relevant to make out his case of innocence or non-involvement in the crime in question.

4. The Sessions Court rejected the application on the ground that over six years have passed post conviction of the petitioner. The petitioner did not offer any reasonable cause for filing such application so late.

5. For better appreciation, Section 391 of Cr.P.C. is reproduced hereinbelow :-

“391. Appellate Court may take further evidence or direct it to be taken. - (1) In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4).....”

6. It is true that there is delay of little over six years in seeking production of the photographs and to lead evidence in proof thereof. The victim was confronted with those photographs during her cross-examination. She claimed ignorance about the same.

7. The case of prosecution is that it was a traditional day. The victim along with her friends was present on the College Campus. The petitioner came all of a sudden and embraced her.

8. It is an appeal from conviction. Learned Sessions Judge in view of no objection by learned APP, allowed the production of photographs. The petitioner would therefore require to lead evidence in proof of the photographs, since the nature of evidence sought to be produced, would go a long way in the petitioner's defence, in a case, in which he has been convicted and sentenced to suffer one year rigorous imprisonment. The Appellate Court should have allowed the application permitting the petitioner to lead evidence.

9. Needless to mention, the accused can make out his case on preponderance of probabilities.

10. In the result, the petition is allowed. The Sessions Court, Sindhudurg-Oros shall allow the petitioner to lead evidence in proof of the photographs. The prosecution would necessarily be entitled to cross-examine the witness, that may be examined by the petitioner in proof of photographs. Learned APP on due instructions even may admit the photographs.

11. Learned Sessions Judge, Sindhudurg-Oros is at liberty either to record the evidence or take such evidence as it is or direct it to be taken by the Magistrate concerned.

(R. G. AVACHAT, J.)