



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APL) No. 1141 of 2023

a S/o. Naresh Patil ..vs.. The State of Maharashtra through Officer In-charge, PS., Kalamana,
Tah. & Dist. Nagpur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. L. Chouhan, Advocate for the applicant (appointed)
Mr. A. R. Chutake, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATE : 24-08-2023

The applicant/original accused is challenging order dated 28-6-2023 passed below Exhibit 46 by the learned Additional Sessions Judge, Nagpur in Special Case No. 39/2022. By the said application, the applicant prayed for recalling the witnesses under Section 311 of the Code of Criminal Procedure, 1973 (Code). The applicant is seeking to recall the witnesses, namely, P.W. 1 - victim, P.W. 3 - mother of victim, P.W. 4 – Chemical Analyser and P.W. 5 – Medical Officer. The grounds for recalling is that copy of Chemical Analyser (C.A.) report and the statement of victim recorded under Section 164 of the Code were not supplied to the applicant when the witnesses were examined.

2. Learned Sessions Court has rejected the application on the ground that the cross-examination of

victim and her mother was recorded in the presence of accused. The accused did not raise any grievance at that time. The learned Sessions Court has further observed that copy of C.A. report was not placed on record when the evidence of P.W. 4 and P.W. 5 were recorded and, therefore, there arises no question of supplying copy of C.A. report to the applicant. The copy was filed subsequently and then supplied to the applicant.

3. In my view, learned counsel for the applicant is fully justified in contending that it is the duty of the Court to ensure that all documents are supplied to the accused in terms of Section 207 of the Code. That apart, the reasoning of the Sessions Court that the copy of C.A. report was not available when P.W. 4 and P.W. 5 were examined is erroneous. Firstly, these witnesses ought not to have been examined without availability of C.A. report and secondly, the rights of accused ought to have been taken into consideration while rejecting his prayer on the ground of non-availability of C.A. report on record. Thus, the first mistake has been committed by examining P.W. 4 and P.W. 5 in absence of C.A. report and second mistake has been committed by rejecting request made by the applicant to recall the witnesses. Once the copy of

C.A. report and the statement under Section 164 of the Code were furnished to the applicant, the first mistake committed could have been cured but then the learned Judge continued to justify the first mistake and thus committed another mistake.

4. Learned Additional Public Prosecutor submits, by referring to the evidence of P.W. 1 – victim that during her evidence, copy of her statement recorded under Section 164 of the Code was not referred to him. This is another reason put forth by the learned Additional Sessions Judge while rejecting the application.

5. The Court, however, lost sight of a vital fact that the statement under Section 164 of the Code could not only be used as corroboration but also to contradict the statement of the witnesses, which opportunity was not given to the applicant particularly when the applicant is facing serious charges under Section 376, 376(2)(k), 376(2)(n) 376(2)(f) read with Section 4 and 6 of the Protection of Children from Sexual Offences Act.

6. Thus, the reasons given by the learned Sessions Court while rejecting the application are perverse and,

therefore, the order impugned is liable to be set aside.
Hence, following order.

- (i) The application is allowed.
 - (ii) The order dated 28-6-2023 passed by the Additional Sessions Judge, Nagpur below Exhibit 46 in Special Case No. 39/2022 is quashed and set aside.
 - (iii) The Additional Sessions Judge shall recall witnesses, namely, P.W. 1 - victim, P.W. 3 - mother of victim, P.W. 4 – Chemical Analyser and P.W. 5 – Medical Officer for the purpose of cross-examination on the grounds put forth by the applicant.
7. The application is disposed of in above terms.
8. The fees of the learned counsel appointed for the applicant be quantified and paid as per the rules.

[Anil L. Pansare, J.]

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