



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1812 OF 2024

Sujit Jayprakash Pardeshi And Others

VERSUS

The State Of Maharashtra And Another

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Mr. A.D. Ostwal, Advocate h/f Mr. P.M. Salunke, Advocate for Applicants

Mr. S.B. Narwade, APP for Respondent No.1 – State

Mr. Rajendra Deshmukh, Senior Counsel a/w Ms. Rakshanda R. Jaiswal, Advocate i/b Mr. D.R. Deshmukh, Advocate and Vishal A. Chavan, Advocate for Respondent No.2

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[CORAM : Y. G. KHOBRADE, J.]

DATE : 14th NOVEMBER, 2024

ORDER :

1. Heard Mr. A.D. Ostwal, learned counsel appearing for the applicants, Mr. S.B. Narwade, learned APP for the Respondent No. 1 – State and Mr. Rajendra Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh for respondent No.2, at length.

2. The applicants have invoked the jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973 (for brevity Cr.P.C.) and prayed for quashing and setting aside of the order dated 23.03.2024 passed below Exh. 86 in Sessions Case No. 10 of 2023.

3. Learned counsel appearing for the applicants canvassed that the applicants/accused are facing the trial for the offence punishable under sections 376, 378(A)(B), 504 read with section 34 of the Indian Penal Code, 1860 (for brevity 'IPC') and under sections 4-A, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for brevity 'POCSO Act'). After due investigation, charge-sheet came to be filed before the learned Special Court and after framing of the charge on 11.01.2024, learned Sessions Court, recorded the evidence of the victim/PW-2, and during the course of cross-examination, certain questions were put to the victim about her family members that as under:

(I) whether her (Victim's) mother, father and other relatives does not wish to see that the Kshitija, Meghna elder mummy, Lavnya and Sujeet Pardesh should not resides in the building where they are staying?

Ans. The Victim answered in affirmative by saying "Yes".

(प्रश्न क्षितिजा, मेघना बड़ी मम्मी, लावण्या व सुजित परदेशी हे ते राहत असलेल्या बिल्डिंग मध्ये राहय नये असे तिचे आई वडील व इतर नातेवाईक याना वाटते का ?

उत्तर : होय

Thereafter the defence counsel put another question as under:

Que. False case has been registered with a view that Kshitija, Meghna elder mummy, Lavnya and Sujeet Pardesh should not stay there?

(प्रश्न : क्षितिजा, मेघना बड़ी मम्मी, लावण्या व सुजित परदेशी हे तेथे राहू नये म्हणून केस खोटी केलेली का?)

The learned counsel appearing for the applicant submits that, the victim answered above question in affirmative by saying "yes". However, the learned Sessions Judge, instead of recording the said question, had directed the advocate for applicants to rephrase the said question with a view that the victim might not understood the question. Therefore, the defence counsel had rephrased the said question and put the said question to the victim, but again the victim answered in affirmative, by saying 'Yes'. But, again learned Sessions Court did not record said answer citing that the victim might not understood the meaning of word 'झुटा' and had directed the defence counsel to again rephrase to make easy to the victim to understood the said question, however, again the learned Sessions Judge did not record the said question stating that the victim is only eight years old and she might not have understood the word 'झुटा'. Therefore, the learned counsel appearing for the applicant/accused filed an application below Exh. 86 and thereby prayed that questions

asked by him to the witness in cross-examination and the answers given by the victim may be recorded.

4. On 22.03.2024, the learned Sessions Judge, Ahmednagar passed the impugned order below Exh. 86 and rejected the said application.

5. On perusal of evidence of victim, it *prima facie* appears that the learned trial Court recorded the evidence of the minor victim in question-answer form, after his satisfaction about the maturity and understanding of the child witness. In cross-examination, learned defence counsel put the following questions, which reads as under:

"(i) *Whether you have stated to police that when mom came I ran towards her with crying?*
Answer – I don't remember.

(ii) *Whether you have stated to police that Meghna Aunti or Kshitija Didi have threatened me not to disclose the incident not anybody?*
Answer - No. I have not stated to police.

(iii) *Whether your family members wish that accused should not live in the building?*
Answer - Yes"

6. On perusal of questions put to the minor victim, it *prima facie* appears that the defence counsel had put those

questions about mindset reading of the victim's parents and relatives and intended to seek the opinion of the witness. The question referred above are not direct or indirect related with the victim but those questions are seeking opinion in regard to the parents and other relatives what they were thinking. Therefore, said questions could not have allowed by the trial court.

7. Needless to say that merely because the trial Court has explained the questions to the witnesses, it does not mean that the trial Court is not recording the evidence properly. Not only this, but the trial Court should not be the mute spectator during the course of trial. In the case in hand, the child victim appears to be of eight years and she was subjected to sexual offence, which she deposed. Therefore, the defence counsel could restrict his questions in respect of the incident and opinion of child witness cannot be obtained about mindset of others.

8. Considering the age of the witness/victim, even if, some understanding is given to her, it does not mean that the trial Court is not conducting the fair trial. Not only this, but the trial Court should not again record the evidence of witness/victim as of stereotype.

9. On 22.03.2024, the learned Sessions Judge passed the impugned order holding that the questions, which were put by the defence counsel and the answers given by the minor victim have already been recorded. However, the victim has not understood the meaning of those questions. Therefore, the learned Session Judge directed to put the question again, and thereafter, the Court tried to collect the fact whether the witness understood the meaning of the question, and thereafter, refused to record the answer as the witness found to be confused. I do not found any substance in the present application. Therefore, the present application is hereby rejected.

[Y. G. KHOBRADE,]
JUDGE

S.P Rane