



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

75 CRIMINAL WRIT PETITION NO. 1557 OF 2023

SANJAY @ PINTYA BHAGWAT KOLI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for the Petitioner : Mr. Vijay Bhalerao Patil.

APP for Respondent/State : Mr. Mukesh K. Goyanka.

Advocate for Respondent No.2 : Mr. R. D. Thorat. (Appointed).

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 18th March, 2024.

P.C.:

1 Heard.

2 This writ petition is directed against the order dated 18th July, 2023 passed below Exhibit-51 by the learned Additional Sessions Judge, Bhusawal in Special (POCSO) Case No.125 of 2020. It was an application for recalling the witnesses for further cross-examination. It was rejected.

3 The learned counsel for petitioner submitted that the evidence of five witnesses is over. However, the petitioner / accused is poorly defended and detailed cross-examination is not taken. He pointed out the quantum of cross-examination of all the witnesses. He is relying on the following authorities:-

I) ***Ravi Mohanlal Bhalotia Vs. State of Maharashtra, 2020 (2)***

Mh.L.J. (Cri) 559, in which this Court in paragraph No.6 held as under:-

“6. Perusal of the impugned order makes it clear that the learned trial court has failed to appreciate the scope of Section 311 of the Cr.P.C. while deciding the application for recall of PW2 Devendra Astekar for further cross-examination. The learned trial court ought to have examined whether further evidence of PW2 Devendra Astekar is essential for just decision of the case or not. Lacuna is inherent weakness either in prosecution case or defence. It cannot be equated with mishandling of the case by the advocates appearing for the parties. According to the learned counsel for the applicant, prosecution case is to the effect that because of the magnet attached to the meter, it was not reflecting correct reading. The learned counsel further submitted that the meter was a plastic meter and magnet has no effect on it and this aspect is not brought on record from cross-examination of PW2 Devendra Astekar, and therefore, prayer for recalling of that witness was made.”

II) ***Babulkhan Wali Mohammad Khan Pathan Vs. State of Maharashtra, 2020 ALL.M.R. (Cri) 182***, in which this Court in paragraph No.40 held as under:-

“40. The Court below has lost sight that if without permitting the cross-examination of the victim, the trial is proceeded and passed a Judgment then it will give rise to a ground in appeal that opportunity was not granted to accused and in that circumstance, the Appellate Court may remand the matter.

So, it will be nothing but consuming not only the time of the parties, but also the precious public time. Therefore, in my view, the Court below ought to have given opportunity to the petitioner permitting him to cross-examine the witnesses, who are remained to be cross-examined through his Advocate even by obtaining undertaking from the learned Counsel for accused that he will not seek any adjournment on any avoidable reasons. Consequently, in the interest of justice though this Court is not of the view that the adjournment be granted just for asking it, but, fair opportunity to the petitioner to cross-examine the witnesses is required to be given.”

4 The learned counsel for petitioner lastly submitted that atleast the doctor (PW-5) may be recalled for cross-examination.

5 The learned APP for the State strongly opposed the petition and submitted that there is evidence of doctor and he has stated that “I found no external injury on her person or private parts. Therefore, recalling of this witness is not necessary. He submitted that the witnesses are sufficiently cross-examined. The trial is of 2020. If the victim and the witnesses are recalled for cross-examination again, there will be mental agony. The learned Trial Court has passed the reasoned order. It is lastly prayed to reject the petition.

6 Perused the statements of the witnesses. Each of the witnesses is not cross-examined at length, however, they are cross-

examined sufficiently. Even in the cross-examination of the doctor, he has admitted that “It is true that on examination of victim, everything was found normal”. History stated is also denied. No any abnormality was detected and hymen of the victim was intact. All these facts show that the learned advocate, who cross-examined the doctor, was cautious and he has sufficiently cross-examined him. Same is the fact about all other witnesses. From the report it reveals that there are allegations of inserting of finger by the applicant in the private part of the victim child and she crying. The child was more than 9 years old at the time of incident. When there is no any external injury, it appears that there is exaggeration in the prosecution story. When such facts are already on record by the independent evidence of doctor (PW-5) and merely because new advocate appointed, applied his mind differently, the recalling of the witnesses is not justified and will not achieve any object. Therefore, no any substance is found in the grounds of objections raised in this petition to allow it.

7 For the reasons discussed above, in the different set of the facts of the case, the ratio laid down in the authorities (cited supra) on behalf of the petitioner is not helpful and therefore, not relied upon. The writ petition deserves to be dismissed. It is dismissed.

8 Considering the fact that the incident took place in the

year 2020 and the petitioner is behind bars for more than three years, the Trial Court is directed to proceed further with the trial and decide the same as expeditiously as possible.

9 It is made clear that the above observations are *prima-facie* in nature for the purpose of deciding the present petition only. The Trial Court shall not get influenced by the same during trial.

10 The fees of Mr. R. D. Thorat, learned appointed counsel for respondent No.2 be paid through the High Court Legal Services Sub-Committee, Aurangabad as per Rules and schedule.

[SANJAY A. DESHMUKH, J.]

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