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

CRIMINAL APPLICATION NO.695 OF 2023

AMIR ABULESH SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Rishi Bhuta a/w Adv. Neha Patil a/w Adv. Saakshi Jha
for the applicant.

Ms. S. D. Shinde, APP for the State.

PSI Sakpal, Gorai Police Station.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2024

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. By this application an order dated 05.06.2023 passed
by the trial Court in Miscellaneous Application (Exhibit-52) is
under challenge. Exhibit-52 was filed by the prosecution for
framing additional charge against the applicant-accused for
the offence punishable under Section 66(E) of the
Information Technology Act, 2000. During the course of the
trial the charge has been framed against the accused for

the offences punishable under Sections 376 and 420 of the Indian Penal Code on the accusation that the applicant had cheated the informant and committed rape on her. The materials on record disclosed that the accused had captured obscene photos of the victim and used them for threatening her for keeping physical relations with him. As the forensic report was supporting the said contention, the application was made seeking the addition in the charge. The trial Court for the reasons mentioned in the impugned order allowed the Miscellaneous Application Exhibit-52.

3. Learned counsel for the applicant submitted that as the examination-in-chief of the informant was over, such an application below Exhibit 52 ought not to have entertained. Learned counsel for the applicant submitted that the trial had already commenced and as the materials on the basis of which the prosecution sought framing of the additional charge under Section 66(E) of the Information Technology Act, 2000 was already available and therefore also framing of such an additional charge at this stage causes prejudice to the applicant.

4. I do not find any merit in the submission of learned counsel for the applicant. The applicant is yet to cross-examine the informant. The trial Court in paragraphs 6 and 7 of the order dated 05.06.2023 has observed thus :-

"6. Further, the record will show that the investigating officer had seized a laptop, pen drive and mobile from the accused which had then been sent for analysts to the forensic science laboratory. Seventy six case related image files and one case related video file were recovered from the hard disk and compact disk. The said CDs were stated to contain objectionable photos of the victim and hence, the trial court had refused to give the copies of the same to the accused in terms of an order dated 12/11/16. The said order was challenged in terms of Criminal Application No.69/17. By the order dated 28/08/17, the Hon'ble High Court directed that the said files and images should be shown to the accused in the presence of the Advocate for the accused and the Superintendent of the Sessions Court at Dindoshi. It was also directed that no copy of the same shall be given to the accused or his Advocate.

7. Prima facie therefore, there is indeed material available before me in the charge-sheet reflecting the fact of the victim's objectionable photos having been recovered from the laptop of the accused. Obviously the said facts were available in the said laptop only on account of having been captured. Hence, considering the further allegation made in the FIR and repeated in her examination-in-chief by the victim about the accused threatening to make viral her photos on the Internet, for compelling her to establish physical relations with him, I am of the view that a charge u/s. 66-E of the Information Technology Act can certainly be framed against the accused. No doubt that the examination-in-chief of the victim has already been recorded in which unfortunately the said CDs were not played and the relevant evidence not extracted from her. It however, cannot be ignored that the trial is still in its preliminary stage and that the prosecution still has a right to bring on record the relevant material by taking recourse

to the relevant provisions of law. There is also no substance in the contention advanced by the Advocate for the accused about the law prohibiting the framing of charge for the offences under IPC and under any Special Act simultaneously.”

5. The impugned order not only does not cause any prejudice to the applicant but is in aid of a fair trial for all concerned. The applicant will get his opportunity to cross examine the witnesses. I see no error in the approach of the trial Court warranting interference by this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

6. Criminal Application is rejected.

(M. S. KARNIK, J.)