

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.770 OF 2024

Ulhas Chandrakant Shendge Applicant

V/s.

The State Of Maharashtra & Anr. Respondents

Mr.Tohid Shaikh i/b Ms.Anjali Patil, for the Applicant.

Mr.V.A. Kulkarni, APP, for Respondent No.1 -State.

Ms.Mansi Kaku, Appointed Advocate, for Respondent No.2.

Mr.V.S. Khatake, PSI, Vileparle Police Station.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd OCTOBER 2024

P.C:-

. By this Application, Applicant is challenging the order dated 22nd April 2024 passed by the learned Sessions Court at Mumbai in Miscellaneous Application(Exhibit-29) in POCSO Special Case No.331 of 2020.

2. It is contention for the learned counsel for the Applicant that, the Applicant had filed an Application before Sessions Court for recalling the witness i.e. victim-PW-1 and it was allowed vide order dated 9th November 2023 and matter was

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posted for evidence on 12th December 2023. On 12th December the victim was present before the learned Sessions Court but the Advocate for the Applicant remained absent, therefore cross-examination of the victim could not be taken place, in the Roznama it was mentioned that victim will not be called for cross-examination.

3. The learned counsel further submitted that, as the Applicant is behind bar. PW-1 victim is the main witness her cross-examination is must to prove defence of the Applicant. Hence, requested to allow the Application.

4. The learned APP strongly objected to allow the Application and requested to reject the Application.

5. I have heard both learned counsel. Perused impugned order.

6. It appears from record that, two times victim was called for cross-examination but learned counsel for the Applicant failed to cross-examine her even cost of Rs.500/- was imposed on the Applicant. The Applicant has been charged under section 363, 376 read with Section 34 of the Indian Penal

Code, 1860 ('IPC' for short) and Section 6,8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short). In the interest of justice, it is necessary to give chance to the Applicant to cross-examine the victim. Hence, I pass following order.

ORDER

- (i) The Application is allowed.
- (ii) The Applicant shall cross-examine the victim-PW-1 on the date given by the learned Sessions Judge.
- (iii) The Applicant shall complete the cross-examination of the witness on same day.
- (iv) The Applicant shall pay cost of Rs.5,000/- to the victim.
- (v) The Trial Court is requested that, the date for cross-examination of victim be given in the month of November or by enquiring with Investigating Officer the date which is convenient to the victim. If Applicant fail to cross-examine the

victim on the given date, the right of the cross-examination of the applicant would be forfeited.

(SHIVKUMAR DIGE, J.)