

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1787 OF 2024**

XYZ (mother of victim) ... Applicant
versus
The State of Maharashtra Respondent

Mr. Avinash B. Avhad along with Mr. Mahesh V. Rawool and Mr. Sahil S. Ghule, Advocates for the Applicant.
Ms.Sangeeta D. Shinde, APP for Respondent State

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th DECEMBER, 2024.

P.C. :

1. By this application, applicant/first informant is challenging the impugned order passed by learned Additional Sessions Judge-6 and Special Judge(POCSO), Thane.

2. It is contention of learned counsel for the applicant that applicant is the first informant and mother of the victim. She lodged complaint with Rabodi Police Station, District Thane under Sections 377 and 506 of the Indian Penal Code 1860 and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 against employee of the school, where her minor son was taking education and was sexually assaulted by the accused. Learned counsel further submitted that charge-sheet was filed on 11th March 2014 against the accused. The matter was transferred in various Court. Out of total witnesses, the

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prosecution has examined some witnesses on 30th November 2024. The prosecution had called three witnesses for examination but evidence of those witnesses could not be recorded due to absence of learned Special Public Prosecutor (SPP). Vide impugned order, learned Sessions Judge has closed the prosecution evidence observing that the prosecution does not want to examine any further witness, which is erroneous. Learned counsel further submitted that the offence is registered under the provisions of POCSO Act. The first informant was not aware about the order passed by the learned Special Judge. Hence, requested to allow the prosecution to examine prosecution witness to prove its case.

3. It is contention of learned APP that she has taken instructions from SPP and the SPP has undertaken to attend the Court dates regularly and further undertaken to examine the prosecution witnesses on the given dates and she will not miss the dates before the Special Court, hence, submitted that prosecution be permitted to examine remaining witnesses.

4. I have heard both learned counsel, perused the impugned order passed by learned Special Judge. Learned Special Judge has passed well reasoned order and learned Special Judge has given reason for closing the prosecution evidence. I do not find infirmity in it. In my view, the matter is about 10 years old. Since then, prosecution is examining witnesses. The matter is prolonged on one or the other pretext. On the day of the impugned order, learned SPP failed to examine the prosecution witness. Learned APP submitted that the learned SPP who conducts the

present matter undertakes to examine the remaining prosecution witnesses diligently and she undertakes to attend the Court dates regularly. The offence is registered under POCSO Act, hence, it is necessary to give opportunity to the prosecution to prove its case.

5. In view of above, I pass following order:

1. The impugned order dated 30th November 2024 in Special Case No.67 of 2024 below Exhibit-1 passed by learned Additional Sessions Judge-6 and learned Special Judge, (POCSO) is quashed and set-aside.
2. The SPP shall examine the remaining prosecution witnesses as early as possible.

(SHIVKUMAR DIGE, J.)