



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APL] No.423 of 2024

Keshav Pralhad Dandge

vs.

***State of Maharashtra, through Police Station Officer, Police Station Ramnagar,
Chandrapur and another***

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

*Mr. V.N. Morande, Advocate for the Applicant.
Mr. S.S. Hulke, A.P.P. for Non-Applciant No.1.
None for Non-Applciant No.2.*

CORAM : M.W. CHANDWANI, J.
DATE : 30th APRIL, 2024.

By this application, the applicant seeks to quash and set aside the order dated 10/01/2024 passed by the learned Chief Judicial Magistrate, Chandrapur below Exh.34 in R.C.C. No.109 of 2015, thereby rejecting the application of the applicant to recall the complainant for cross-examination.

02] Heard the learned Counsel for the applicant as well as the learned A.P.P. for the State. Though, non-applciant No.2 is duly served, nobody appears on her behalf.

03] The contention is that, the matter has been settled out of the Court and a pursis to that effect has been filed on record. Since the offence was not compoundable, the evidence of the victim was recorded, but the victim stated different story in her examination-in-chief. The Advocate, who was junior in practice, could not bring the material omissions on record while conducting the cross-examination.

04] Perused of evidence of the complainant shows certain omissions/improvements and the complainant has not been confronted with those omissions/improvements. The function of the criminal Court is administration of criminal justice and just because of the fault of the Advocate, the parties should not suffer. A reference is made to the case of Rajendra Prasad vs. Narcotic Cell – (1999) 6 SCC 110, wherein the Supreme Court in paragraph 8 has held as under:

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

05] Considering the facts of the present case, a chance should be given to the accused/applicant to cross-examine the complainant in detail by recalling her. If it is done, no prejudice would be caused to the parties. Hence, the following order is passed:

ORDER

- I. Impugned order dated 10/01/2024 passed by the learned Chief Judicial Magistrate in R.C.C. No.109 of 2015 is set aside and the application (Exh.34) filed by the applicant is allowed.

- II. The applicant is permitted to cross-examine the witness.
- III. The application is allowed and disposed of in the aforesaid terms.

JUDGE

**sandesh*