



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

CRIMINAL APPLICATION (APPA) NO. 349 OF 2024

IN

CRIMINAL APPEAL NO. 411 OF 2022

JUNED @ JISHAN S/O GULZAR @ GULSHER KHAN

Vrs.

STATE OF MAHARASHTRA AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Atharva Khadse, Advocate h/f Shri S. P. Bhandarkar, Advocate
for applicant/appellant.

Shri H. D. Dubey, APP for respondent No.1.

Shri J. S. Duhilani, Advocate for respondent No.2.

CORAM: M. W. CHANDWANI, J.

DATE : 03/04/2024.

1. By the present application, the victim -
respondent No.2 is seeking to conduct the in-camera
proceedings of the present appeal. For this purpose, the
respondent No.2 places reliance on Section 327(2) of the
Code of Criminal Procedure, 1973, which runs as under :-

"327(2). Notwithstanding anything contained in
sub-section (1), the inquiry into and trial of rape
or an offence under section 376, (section 376-A,
section 376-AB, section 376-B, section 376-C,
section 376-D, section 376-DA, section 376-DB)
or section 376-E of the Indian Penal Code (45 of
1860) shall be conducted in camera".

Provided that the presiding Judge may, if
he thinks fit, or on an application made by either
of the parties, allow any particular person to
have access to, or be or remain in, the room or
building used by the Court:

[Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.]"

2. It is not necessary to go in detail into the factual matrix of the appeal, suffice to say that the identical issue came before the Division Bench of this Court, Bench at Goa in Criminal Misc. Application No.584/2021 in Criminal Misc. Application (Main) No. 437/2021 wherein, in Paragraph No.19, the Court has held that Section 327(2) of the Code of Criminal Procedure does not apply to the appeal against conviction. The Paragraph No.19 is reproduced below :-

"19. Thus, having regard to the aforesaid, we have no hesitation in holding that Section 327(2) of the Criminal Procedure Code would only be applicable to an "inquiry" or "trial" and that the same will not apply to appeals, either appeal against conviction or an application seeking leave to file appeal against acquittal."

3. The decision of Division Bench of this Court Bench at Goa was carried before the Hon'ble Supreme Court. The Hon'ble Supreme Court did not incline to interfere with the decision of the Division Bench of this Court.

4. In view of the law enunciated in the decision of the Division Bench of this Court, Bench at Goa, the application has no merit. Hence, it is rejected.

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5. Learned counsel for the applicant seeks time to file reply on this application.

6. Stand over to 10/04/2024.

[M. W. CHANDWANI, J.]

Choulwar