



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.198 OF 2018

The State of Maharashtra,
Through P.S.O. Police Station,
Wadhwana, Tq. Udgir, Dist. Latur.

... Applicant
(Orig. Complainant)

Versus

1. Sikandar S/o. Wajidmiya Mahagame,
Age : 48 years, Occu. : Auto Driver,
R/o. Mangrul, Tq. Udgir, Dist. Latur.

2. XYZ

... Respondents

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Mr. N. D. Batule, APP for Applicant – State.

Mr. Ram S. Shinde, Advocate for Respondent No.1 (Through V.C.)

Ms. Preeti R. Wankhede, Advocate for Respondent No.2. (Through V.C.) (Appointed).

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 JULY 2025

PRONOUNCED ON : 22 JULY 2025

ORDER :

1. State is hereby seeking leave to question the judgment and order of acquittal passed by learned Additional Sessions Judge/Special Judge (POCSO), Udgir, Dist. Latur dated 30.11.2016 in Special Case (POCSO) No. 09 of 2014.

2. Learned APP pointed out that, on receipt of complaint for commission of offence punishable under sections 354A, 509,

294 of Indian Penal Code, under section 8 of Protection of Children from Sexual Offences Act (POCSO), and under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, investigation was carried out and accused was charge-sheeted and tried by Special Court, which came to be decided on 30.11.2016.

3. It is further pointed out that, in support of charge, prosecution has adduced evidence of as many as 10 witnesses and also relied on documentary evidence. He further submitted that, victim a college going girl, studying in 11th standard, engaged auto rickshaw of accused for returning home from college on 12.08.2014. After dropping other passengers, when the girl was alone, accused offered the girl to come and sit near him, thereby outraging her modesty. That, sensing ill intention, the girl jumped out of the auto rickshaw. That, this incident was seen by independent witnesses like bus conductor and a passenger. That, parents of the girl were reported. That, the report was promptly lodged. Victim and independent witnesses have been examined, but still learned trial court has disbelieved the prosecution version holding evidence of victim as well as independent witnesses to be unrealistic and improbable. That, there was overwhelming evidence warranting conviction. Without assigning sound reasons,

acquittal has been awarded i.e. by non appreciation of evidence as well as law in its correct perspective. State has a good case in appeal and hence learned APP urges for leave to file appeal.

4. Learned counsel representing accused supported the judgment by stating that there is correct appreciation of evidence as well as law. That, prosecution has failed to establish charges beyond reasonable doubt and he urges to refuse leave.

5. Learned counsel appointed for victim also supported case set up by prosecution and would state that, there was sufficient material about victim to be a minor. She being misbehaved with ill intentions, to save herself victim jumped and suffered injuries. That, there are independent witnesses. Therefore, acquittal was unwarranted and she too prays for leave to file appeal.

6. After hearing each of the side respectively, on going through the papers, it appears that on report lodged by very victim at Exh.22, a crime was registered for above offences relating to incident with her on 12.08.2014 while she was returning from college. Her transfer certificate carries date showing her minor at the time of incident. She has stepped into witness box at Exh.21

and has narrated the entire incidence about she hired a rickshaw of accused and finding her alone, accused asked her to come and sit near him. In testimony before the court, she stated about her hand being caught, which is missing from FIR. However, FIR being of the same day, failure to mention about act of holding her hand at the instance of minor should not be given undue importance, more particularly, when it is not encyclopedia of evidence. She sensed trouble, and therefore, jumped and even suffered injury. PW4 Narsing and PW8 Pramod, who are independent witnesses, to have testified about the girl jumping out of the auto rickshaw. Perused the analysis and observations of trial court commencing from paragraph no.30 onwards. As pointed out, version of above witnesses have been disbelieved holding their testimonies to be appearing as unrealistic and improbable without assigning sufficient reasons for drawing such opinion. Therefore, *prima facie* there is a case to be contested in appeal. Hence, leave as prayed deserves to be granted. Accordingly, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.

- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.
- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial court.
- (vii) Fees of the learned appointed counsel to be paid through the High Court Legal Services Sub Committee, Aurangabad as per Rules.

(ABHAY S. WAGHWASE, J.)