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31-APPLN-5046-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

31 CRIMINAL APPLICATION NO. 5046 OF 2024

Somnath Balasaheb Lamkhade

VERSUS

The State Of Maharashtra And Another

...

Mr. Sandip Ramnath Andhale, Advocate for Applicant.

Mr. S. B. Jadhav, APP for Respondent-State.

Mr. Prasad B. Kadam, Appointed Advocate for Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 10<sup>th</sup> JULY 2025.

PC :-

1. Heard Mr. Andhale, the learned Advocate for the applicant; Mr. Jadhav, the learned APP for Respondent-State, and Mr. Kadam, learned Advocate Appointed for Respondent No.2. The matter is taken up for final disposal at the stage of admission with the consent of the parties.

2. The applicant has approached this Court as two of the questions asked in the cross-examination of PW-1, who happens to be the mother of the victim in Special POCSO Case, were not allowed to be put to her

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in cross-examination.

3. The applicant is being prosecuted for a case for offences punishable under Sections 8, 9(M), 10 and 12 of the POCSO Act, as well as Section 354-A of the Indian Penal Code, 1860 (for short “IPC”).

4. In short, the case of the prosecution is that the victim, aged three years, was raped by the accused by taking her to his room. The victim came to her home and went to her grandmother. The grandmother while cleaning private part of the victim, noticed a semen on the private part. She, therefore, asked the victim as to what happened? On that the victim told her the name of the accused. The mother of the victim i.e. PW-2 was in the field. When she came back to home, the mother-in-law told her the incident. It is on that, she got the knowledge of incident and, thereafter, a complaint was filed after her husband came home. In the trial, this witness is presently being examined. In the cross-examination, the learned defence Counsel asked the following questions:

“11. In year 2022 sometimes my daughter use to go school. While recording statement of my daughter by police, I have not explained

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her, what to say. I have not explained her about the statement to be given in Parner Court.

**Question:- Is it true to say that, as your daughter is unable to understand anything you have not explained her anything?**

12. The defence advocate is not allowed to ask this question because in this matter the investigating Officer has recorded the statement of victim. So also the statement of victim recorded by Magistrate under Section 164 of Cr.P.C. is placed on record in closed envelope.

No dispute occurred between families or myself and accused on 10.10.2022.

**Question:- Is it true to say that, you do not have any personal knowledge about the incident you have stated in examination-in-chief?**

The defence advocate is not allowed to ask this question because in this matter because the witness has stated in examination-in-chief that at first instance my mother-in-law told her about the incident and later on she has asked her daughter about the same.

Cross-Examination is deferred as the defence counsel has filed an application vide Exh.21.”

5. The learned Sessions Judge did not allow these questions to be asked, stating that the questions are not relevant and that there is no statement indicating that the PW-1 has personal knowledge. The applicant has, therefore, approached this Court.

6. Learned Advocate for the applicant submits that to give a fair

opportunity and chance to cross-examine the witness, both the questions are very much relevant. It is necessary to bring on record that the PW-1 does not have any personal knowledge and that since victim herself was unable to understand anything (about the offence), this witness has not explained anything to the victim. Since the question was not allowed to be asked, he could not ask further questions in his defence. The learned Advocate submits that thus fair opportunity to cross-examine the witness was thus denied to the applicant. The questions were neither aggressive nor exposing towards any of the witnesses or the parties. The questions were very much necessary to bring on record the facts and the correct evidence so as to assist the Court in coming to a proper conclusion. The learned Special Judge failed to appreciate this aspect and did not allow the questions to be asked. In his submission, it is very much necessary to allow both these questions to be asked.

7. Learned APP vehemently opposed the application. He submits, by inviting attention to the statement of PW-1, that at no place the witness ever stated that she has a personal knowledge of the incident. Even in Ethape

her deposition before the Court, she has not stated that she has any personal knowledge. It is also not stated that she did or did not explain anything to the victim. In such circumstances, in his submission, asking such questions in the cross-examination would only divert attention. In any case, both these questions are neither relevant nor necessary. The learned Sessions Court has rightly not allowed Advocate to ask both these questions. He prays for dismissal of the application.

8. Learned Appointed Advocate for Respondent No.2 also opposed the application. He submits that in cross-examination only such questions can be asked whereby the statements in the deposition can be doubted or to expose the witness. He prays for dismissal of the application.

9. This Court has gone through the statements, supplementary statements and statement recorded under Section 164 of Cr.P.C. of PW-1. This Court finds that, at no place, it is the case of the prosecution that the PW-1 has said that she has any personal knowledge of the incident. On the contrary, the statement is very specific that she came to know Ethape

about the incident from her mother-in-law. There is also nothing to show that she either explained anything to the victim or did not explain anything to the victim. Thus, this Court finds that in either case, no question is necessary or relevant. This Court finds substance in the submissions of learned APP that the questions are asked only to divert the attention of the witness, and no purpose would be served by asking such question.

10. Considering all above, this Court finds that there is no merit in the application, application deserves to be dismissed. The same is hereby dismissed.

11. Advocate Mr. Kadam is appointed for Respondent No.2. He shall be entitled to receive fees as per Legal Aid rules.

**[KISHORE C. SANT, J.]**