

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4713 OF 2024

Ritesh Atmaram Patil ... Petitioner
Versus
The State of Maharashtra and Anr. ... Respondents

.....
Mr. Satyavrat Joshi a/w Ms. Shivani S. Kondekar, for the Applicant.

Mr. S. H. Yadav, APP, for the Respondent-State.

Mr. Vaibhav Sugdare, Appointed Advocate, for Respondent No.2.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 17th JANUARY, 2025.

P.C.

Rule.

2 Rule made returnable forthwith.

3 Heard finally with the consent of the learned Counsel for the parties and the learned APP.

4 Learned Counsel for the petitioner is facing a prosecution for the offences punishable under Section 376(2),(n), 420 of the Indian Penal Code r/w Sections 3(1) (r) , 3(1)(w)(i), 3(1)(w)(ii), (Ii), 3(2)

(v),3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5 When the evidence of the victim was being recorded by the trial Court on 20th September, 2024, the Counsel representing the petitioner was absent since he was alleged to be busy before another Court. Learned Special Judge recorded the evidence of the victim, who was examined by the Assistant Public Prosecutor. It appears that after completing the examination-in-chief Advocate for the accused, viz. Mr.Pise was present in the Court but he refused to cross examine the victim for the reasons best known to him. Such conduct of Advocate Mr. Pise is against the rules of Bar Council of Maharashtra and Goa.

6 Thereafter, strangely, he moved an application for setting aside the order of ‘No Cross Examination’ passed below Exh.11 on the same day. The learned Sessions Judge, in his wisdom, rejected the said application by passing a reasoned order.

7 I heard Mr. Joshi, learned Counsel for the petitioner, Mr. Sugdare, learned Counsel for the victim and the learned APP.

8 Learned APP and learned Counsel for the victim are *ad-idem* that an opportunity is required to be given to the defence to cross examine the victim in order to have a fair trial which is also a fundamental right of the accused. Even otherwise, the trial Court could have imposed heavy costs while setting aside the said order by allowing the defence to cross examine the victim.

9 Be that as it may.

10 Learned APP Mr. Yadav, however, vehemently argued to impose heavy costs upon defence Counsel in the trial court, in view of his unbecoming conduct of not cross examining the victim though he was very much present before the Court after examination-in-chief was over. Learned Counsel for the respondent-victim supports the learned APP.

11 Mr. Joshi, learned Counsel for the petitioner, submits that necessary order may be passed in the interest of justice.

12 The conduct of Advocate Mr. Pise by not examining the victim in such a serious case is indeed against the professional ethics as well as against the rules.

13 The learned Special Judge while rejecting the application below Exh. 11 has rightly made observations. However, since the victim was unnecessarily troubled who will be required to again attend the Court to face the cross-examination of the defence, she needs to be adequately compensated. I, therefore, direct Advocate Mr. Pise to pay/deposit costs of Rs.5000/- to the victim on or before the next date in the trial Court.

14 The parties shall appear before the trial Court on the next date without fail.

15 The petition is disposed of.

16 Rule is made absolute in the aforesaid terms with no order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]