



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO. 807 OF 2020

Vipul S/o. Sakharam Bankar

VERSUS

The State Of Maharashtra And Anr

...

Mr. K. S. Solanke a/w MrHarshal Prakash Randhir, Advocate for the
petitioner,

Mr. S. S. Dande, APP for Respondents

CORAM : Y. G. KHOBRAGADE, J.

Dated : 1st April, 2026

PER COURT :-

1. Rule. Rule made returnable forthwith and with the consent of the parties, the petition is heard finally at the stage of admission.
2. By the present petition, the petitioner takes exception to the order dated 17.07.2019 passed below Exh. 17 in Special (POCSO) Case No. 2 of 2016, whereby the learned Special Judge declined to grant application under section 311 of the Criminal Procedure Code for recalling the victim (PW-5) for further cross examination.
3. Learned counsel appearing for the petitioner canvassed in vehemence that on 27.09.2015, Crime No. 211 of 2015 against the present petitioner for the offences under sections 363, 366-A, 376(2) (n) of the Indian Penal Code and Sections 6 and 8 of the Protection of Children from Sexual Offences Act, 2012. After due investigation, charge sheet came to be filed for the said offence. The learned Special



Court framed charges against the petitioner/accused for the said offence. The prosecution examined several witnesses including PW-5 victim. However, during the course of cross-examination, some important questions remained to be put to PW-5 victim, and certain omissions and contradictions remained to be brought on record. Therefore, it was necessary to recall the witness PW-5. However, on 17.07.2019, the learned Special Court passed the impugned order and rejected the application under section 311 of Cr.PC., hence prayed to quash and set aside the same.

4. Per contra, the learned APP canvassed that provisions of Section 311 Cr.PC. cannot be invoked to fulfill the lacuna left while cross examining the witness. The petitioner has not brought any material on record to recall the PW-5 victim; hence, prayed for dismissal of the petition.

5. On perusal of the record, it appears that the prosecution examined in all 14 witnesses to prove the charges against the petitioner accused. The petitioner has filed Exh. 70, an application under Section 311 of the Cr.PC., and prayed for the recall of victim PW-5 on the ground that, during the course of cross-examination, some important questions, as well as certain omissions and contradictions, inadvertently remained to be brought on record. However, the petitioner has not stated what important questions remained to be put



to the witness PW-5 and after examination of all the witnesses, the petitioner prayed for recall of victim PW-5 for further cross-examination.

6. Section 311 of Cr.PC. provides for recall of any witness at any stage of any enquiry, if his evidence appears to be essential for just decision of the case. However, in the case in hand, the petitioner has not brought any material on record to show that further cross examination of the victim PW-5 is essential for just decision of the case.

7. On 17.07.2019, the learned Special Judge has passed the impugned order and rightly held that PW-2 victim was cross examined on behalf of the petitioner-accused and no reason has been assigned for recall of the witness. Therefore, I do not find that the petitioner has made out any substantial ground to interfere with the findings recorded by the trial Court.

8. In view of the above discussion, the present petition deserves to be dismissed and accordingly, it is dismissed. Rule discharged.

9. Interim order granted on 10.08.2020 stands vacated.

(Y. G. KHOBRAGADE, J.)