

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.....of 2019

(@ Special Leave Petition (Cr1.)No.4480 of 2019)

Smruti Tukaram Badade

Petitioner(s)

VERSUS

State of Maharashtra & Anr.

Respondent(s)

O R D E R

Leave granted.

The Learned Single Judge of the High Court of Judicature at Bombay by an order dated 20 March 2019 dismissed an application filed by the appellant for transfer of Sessions Case No 234 of 2015 from the Court of the Additional Sessions Judge, Thane to the Court of the Sessions Judge, Mumbai.

The second respondent is facing trial for offences under Section 376, 342, 323 and 506(2) read with 34 of the Code of Criminal Procedure 1973.

The High Court noted that eleven witnesses had been examined until date, including the parents and brother of the appellant. At the stage of the examination of the appellant who is the prosecutrix, she filed an application seeking transfer of the proceedings. The High Court observed that no case for transfer had been made out since the grievance of the appellant, which was in relation to the conduct of the trial by the Presiding Officer and in

regard to the Public Prosecutor did not survive, since the Trial Judge had been transferred and the Assistant Public Prosecutor had been replaced.

Notice was issued by this Court on 1st July 2019. The Standing Counsel for the State of Maharashtra has been served.

At this stage, we do not express any view on the merits of the allegations which led the appellant to seek a transfer of the pending trial from the Court of the Sessions Judge, Thane to the Court of the Sessions Judge, Mumbai. It has become unnecessary to enter into that arena since Ms Vibha Datta Makhija, learned Senior Counsel appearing on behalf of the appellant requested the Court to issue facilitative directions to ensure that the appellant is able to depose freely without any pressure or coercion.

Mr Vinay Navare, learned Senior Counsel appearing on behalf of the second respondent submitted that this Court may impose necessary safeguards for the above purpose.

Having considered the facts and circumstances and the submissions of the learned senior counsel we issue the following directions;

- (i) The Sessions Judge, Thane shall take necessary steps to ensure in camera proceedings in compliance with the provisions of Section 327(2) of the Code of Criminal Procedure 1973;
- (ii) In terms of the guidelines issued by this

Court in ***Sakshi vs Union of India & Ors***¹, the questions to be addressed to the appellant in the course of her cross-examination by counsel for the second respondent shall be handed over in advance in writing to the Presiding Officer. The Presiding Officer shall ensure that the testimony of the witness is recorded in a dignified manner;

(iii) Mr Vinay Navare, learned Senior Counsel for the second respondent stated that on the date or dates on which the evidence of the appellant has to be recorded, the second respondent shall apply for exemption from personal appearance before the learned Sessions Judge; and

(iv) In the event it becomes necessary for the appellant to do so, she would at least one week before the date fixed for the recording of her evidence, apply to the Commissioner of Police for being granted police protection during the course of travel to Court and appearance in the Court of the Sessions Judge.

Ms Makhija and Mr Navare learned Senior Counsel stated that the appellant and second respondent would ensure that no unnecessary adjournments are taken and that they will cooperate in the recording of evidence and in the conclusion of the trial expeditiously.

1 (1996) 2 SCC 384

The appeal is accordingly disposed of.

Upon the conclusion of the proceedings in the above appeal, Ms Makhija has requested this Court to take up the wider issue on the need to set up vulnerable witness court rooms in compliance with the decision of this Court in ***State of Maharashtra vs Bandu***². On this aspect, notice shall issue to Registrar General of the Bombay High Court returnable in six weeks.

..... J.

[Dr Dhananjaya Y Chandrachud]

.....J.

[Indira Banerjee]

New Delhi;
23 July 2019

ITEM NO.17

COURT NO.11

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.)No(s).
4480/2019

(Arising out of impugned final judgment and order dated 20-03-2019 in CRLA No. 165/2017 passed by the High Court of Judicature At Bombay)

SMRUTI TUKARAM BADADE

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ANR.

Respondent(s)

IA No. 77276/2019 - EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT

IA No. 77287/2019 - EXEMPTION FROM FILING O.T.

IA No. 77284/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 23-07-2019 These matters were called on for hearing
today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Vibha Datta Makhija, Sr. Adv.
Ms. Jaikriti S. Jadeja, AOR
Mr. Praveen Gaur, Adv.

For Respondent(s) Mr. Nishant R. Katneshwarkar, AOR
Mr. Anoop Kandari, Adv.

Mr. Vinay Navare, Sr. Adv.
Mr. Harshad Bhadbhade, Adv.
Ms. Deeplaxmi Subhash Matwankar , AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

**(KAVITA PAHUJA)
COURT MASTER (SH)**

**(SAROJ KUMARI GAUR)
BRANCH OFFICER**

[Signed order is placed on the file]