

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO. 767 OF 2015

Sau. Priyanka Uday Ahirrao,
Age: 27 years, Occ: Service,
R/o: Plot No.40, Govind Nagar,
Shahada, Taluka : Shahada,
Dist. Nandurbar.

... PETITIONER

VERSUS

1. Shri Uday Kisanrao Ahirrao,
Age: 35, Occ: Service,
2. Kisanrao Sadashiv Ahirrao,
Age: 55 years, Occ: Nil,
3. Tarabai Kisanrao Ahirrao,
Age: 50 years, Occ: Household,
4. Pankaj Kisanrao Ahirrao,
Age: 50 years, Occ: Nil,

1 to 4 R/o Purushottam Nagar,
Taluka Shahada, District : Nandurbar.
5. Jyoti Rajendra Sonawne,
Age: 36 years, Occ: Household,
6. Rajendra Gangadhar Sonawne,
Age: 40 years, Occ: Nil.

5 & 6 R/o Sakri,
Taluka Sakri, District Dhule.
7. Kanchan Sanjay Bedse,
Age: 28 years, Occ: Household,

8. Sanjay Dhanaji Bedse,
Age: 32 years, Occ: Nil.

7 & 8 R/o: Katraj, Ambegaon Pathar,
Near Sacchaimata Mandir, Pune,
District Pune.

9. The State of Maharashtra.

... **RESPONDENTS**

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Mr. A. S. Savale, Advocate for Petitioner.

Mr. G. D. Jain, Advocate for Respondent Nos.1 to 8.

Mr. S. M. Ganachari, APP for Respondent No.9.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 16th November, 2015.

JUDGMENT:

. Rule. Rule made returnable forthwith. Heard with the consent of learned counsel for the parties.

2 This petition takes an exception to order dated 26th February, 2015 passed by the learned Judicial Magistrate First Class, Shahada below Exhibit 56 in RCC No.184 of 2011 recalling Complainant for further cross-examination.

3 Facts giving rise to the petition may be stated in brief as under:

- i. Petitioner is wife of Respondent No.1. Respondent Nos.2 and 3 are father-in-law and mother-in-law of Petitioner. Respondent Nos.4 to 8 are nearest relatives of husband of Petitioner.
- ii. Petitioner was married to Respondent No.1 on 18th April, 2008 at Shahada. Couple was blessed with a male child. Initially for 9 months Petitioner was treated well in her matrimonial house. It is alleged that thereafter her husband and in-laws started demanding Rs.4,00,000/- for purchasing a plot and a car. As demand was not fulfilled she was harassed by the Respondents. Ultimately being tired of ill-treatment Petitioner left the matrimonial house and started to reside with her parents.
- iii. On 24th August, 2011 Petitioner lodged report to Shahada Police Station. On her report Crime

No.129 of 2011 was registered for the offences under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

- iv. On completion of investigation charge-sheet was submitted. It was registered as RCC No.184 of 2011. Charge came to be framed and the trial commenced.
- v. On 9th January, 2015 Petitioner was examined and cross-examined. After the evidence of Complainant was recorded application Exhibit 56 was submitted by some of the Respondents / Accused under Section 311 of the Code of Criminal Procedure to recall Complainant for further cross-examination. Application was strongly objected by learned APP. After hearing the parties application was allowed vide order dated 26th February, 2015. Being aggrieved thereof Complainant has filed the instant petition.

4 According to Petitioner application was vague and it was filed to fill up the lacunae in the defence. It is submitted that change in lawyer cannot be a ground to recall the witness under Section 311 of the Code of Criminal Procedure and the impugned order was passed by giving total go bye to the established principles of law and rules of Criminal Jurisprudence.

5 During the course of arguments learned counsel for Petitioner placed strong reliance on the following authorities -

- a. **Madanmohan Chandak Kundanlal Vs. State of Maharashtra and anr**¹
- b. **Narendra alias Rinku S/o Raghuveer and Gaurav S/o Raghuveer Vs. State of U.P. and Kanchhid Singh S/o Herpal Singh**²
- c. **Ejaz and Ors. Vs. State of U.P. and Anr**³
- d. **Popatlal Jethabai Shah Vs. State of Maharashtra**⁴

1 2008 CRI L. J. 968 (Bombay High Court)

2 MANU/UP/0128/2007 (Allahabad High Court)

3 MANU/UP/2674/2010 (Allahabad High Court)

4 2002 CRI. L. J. 794 (Bombay High Court)

- e. **Smt. Sushma Sakharam Satan Vs. State of Maharashtra and Anr**¹

6 Respondents in their affidavit in reply strongly resisted the petition. It is alleged that petition has been filed intentionally to delay the criminal trial. It is contended that after recording cross-examination of Complainant on the same day Accused noticed that on some material points Complainant was not cross-examined and so application Exhibit 56 was moved by them to get full opportunity and set up their defence in the cross-examination of Complainant.

7 On the scope of Section 311 of the Code of Criminal Procedure learned counsel for Respondents relied upon -

- a. **Hoffman Andreas Vs. Inspector of Customs, Amritsar**²
- b. **Mansaram Shaligram Sawalkar & anr. Vs. State of Maharashtra**³

1 2010(1) LJSOFT 13 (Bombay High Court)

2 2000 (10) SCC 430

3 2012 (2) Bom.C.R.(Cri.) 587

c. **Rajesh Agarwal Vs. State of West Bengal**⁴

d. **Riyazuddin and Ors. Vs. State of U.P.**⁵

8 Needless to state that object of Section 311 of the Code of Criminal Procedure is obviously to enable the Court to arrive at the truth or otherwise of facts under investigation by summoning and examining the witnesses who can give relevant evidence irrespective of the fact whether particular party has summoned them or not. This section confers wide discretion on the Court and it can be exercised at any stage of the trial for the just decision of the case.

9 In the case on hand application Exhibit 56 was moved on the same day after cross-examination of Complainant was concluded.

10 True, that engaging an Advocate of choice alone would not be a ground to recall the witness. But in application Exhibit 56 which was immediately filed Accused have specifically stated that on some material points Complainant was not cross-examined and therefore, Complainant was to be recalled to avoid injustice to be

4 CALCRILR-2011-2-676 (Calcutta High Court)

5 2001 Cri. L. J. 3907 (Allahabad High Court)

caused to them. In this background Trial Court found that fair opportunity is to be given to Accused and the impugned order of recalling the Complainant was passed. The question of prejudice to Complainant would not arise as she is the local resident.

11 In the above premise this Court does not find it a fit case to interfere in writ jurisdiction. Hence the following order -

ORDER

Criminal Writ Petition No.767 of 2015 stands dismissed.

[INDIRA K. JAIN, J.]

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