

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.665 OF 2016

Anuradha Ravindra Irale,
Age-50 years, Occu-Household,
R/o N-4, Cidco, Aurangabad

PETITIONER

VERSUS

1. Ravindra Daulatrao Irale,
Age-51 years, Occu-Service,
R/o N-4, B-74, Cidco, Aurangabad,
2. Gangubai Daulatrao Irale,
Age-75 years, Occu-Household,
R/o N-4, C-Sector, Cidco,
Aurangabad.
3. Bhagwant S/o Daulatrao Irale,
Age-55 years, Occu- Not known,
R/o N-4, C-Sector, Cidco,
Aurangabad.
4. Pandit S/o Daulatrao Irale,
Age-45 years, Occu-Not known,
R/o N-4, C-Sector, Cidco,
Aurangabad.
5. Vidya Bhagwant Irale,
Age-45 years, Occu-Not known,
R/o N-4, C-Sector, Cidco,
Aurangabad.
6. Jaswant Bhagwantrao Irale,
Age-75 years, Occu-Not Known,
R/o N-4, C-Sector, Cidco,
Aurangabad.

7. The State of Maharashtra

RESPONDENTS

Mr.M.K.Deshpande, Advocate for the petitioner.
Mr.B.A.Dhengle, Advocate for respondent Nos. 1 to 6.

Mr.N.T.Bhagat, APP for respondent No.7.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/06/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the orders dated 04/03/2016 below application Exh.57 and 58 delivered by the learned Magistrate, by which the prayer for examining three witnesses has been rejected.
3. The petitioner is also aggrieved by the judgment of the Revisional Court dated 06/05/2016 by which Cri.Rev.Appl.No. 51/2016 has been dismissed.
4. I have heard the learned Advocates for the respective sides at length.
5. Issue is as regards examining 3 witnesses by applications Exh.57 and 58 filed u/s 311 of the Cr.P.C.
6. The petitioner desired to examine her real married sister Ratna

Sunil Gaikwad, her mother Urmilabai Laxmanrao Pawar and her brother Purushottam Laxmanrao Pawar.

7. The witness Purushottam did not appear for leading evidence on several dates and hence the learned Magistrate closed his evidence on 04/03/2016 by rejecting Exh. 58. Exh.57 has been rejected on the ground that the proceedings are about 5 years old. There are general directions from the High Court to expeditiously decide old matters and the names of Ratna and Urmilabai have not been shown as witnesses in the list of witnesses.

8. Mr.Deshpande strenuously submits that since she had narrated various episodes of illtreatment at the hands of the respondent husband, to her sister and mother, both of them are material witnesses. The learned Magistrate has closed the evidence of the prosecution only because Purushottam did not appear. If an opportunity is granted, the petitioner would examine Purushottam, Ratna and Urmilabai, one after another and without seeking adjournments. Refusal to permit their examination would seriously affect the case of the petitioner.

9. Mr.Dhengle, learned Advocate appearing on behalf of respondent Nos. 1 to 6 submits that unless the names of witnesses are mentioned in the list to be supplied in advance, no permission can be granted u/s

311 of the Cr.P.C. So also Purushottam himself did not appear for leading evidence and hence permitting the petitioner to examine Purushottam would amount to granting undue liberty to the petitioner.

10. He further submits that the learned Magistrate as well as the Revisional Court has considered this issue in details and has held that the order of closing evidence of the prosecution does not call for any interference.

11. In my view, it is trite law that unless laches are attributed to the conduct of a litigant and unless it is concluded that the litigant desires to delay the matter with oblique motives, the order of closing the recording of evidence is not to be lightly passed. The pending proceedings have been lodged in 2011 and cannot be said to be very old or pending for a long time. The endeavour of the learned Magistrate to expeditiously decide cases which are 5 years old is appreciable, but not at the cost of the rights of the litigants.

12. The Revisional Court could have imposed conditions on the petitioner by permitting her to bring the 3 witnesses. I am unable to agree with the conclusions of the Revisional Court as well as the Trial Court since it would preclude the petitioner from leading evidence of her brother, sister and mother with whom she has shared her purported

harrowing experience of illtreatment.

13. As such, this petition is allowed. The orders dated 04/03/2016 passed by the learned Magistrate are set aside. Application Exh.57 and 58 are allowed under the following conditions :-

- [a] The petitioner shall pay costs of Rs.6,000/- by depositing it before the learned Magistrate within 4 weeks and the 6 respondents herein shall withdraw the said amount in equal proportion without conditions.
- [b] The petitioner shall produce her witness Purushottam on the approaching date before the learned Magistrate for examining him. After his examination is concluded, the petitioner shall produce Ratna and followed by her she shall produce Urmilabai.
- [c] The petitioner will not be entitled for any adjournment on any count in leading evidence of these 3 persons. In the event any of these persons do not appear on a date so granted by the learned Magistrate, he would be at liberty to proceed further in the case.
- [d] The statement of the petitioner is recorded that besides the said 3 witnesses, the petitioner shall not produce any more witness.

14. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)