

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 538 OF 2010

Ashish Ramesh Waghe. ... Petitioner.
Versus
The State of Maharashtra & anr. ... Respondents.

None for petitioner.

Ms. A.T. Javeri, APP for State.

Ms. Mangala Waghe, respondent No. 2 in person.

CORAM : RAVINDRA V.GHUGE, J
DATE : JULY 7, 2016

P.C.:

1 Respondent No. 2 namely Smt. Mangala Ashish Waghe is present in person before this Court.

2 This matter was listed for final hearing by order dated 20/6/2016. None appeared for the Petitioner on 30/6/2016. Even today, the Petitioner is absent.

3 The Petitioner has challenged the order dated 16/9/2009 passed by the learned Magistrate, by which the application dated 10/8/2009 filed by respondent No. 2, seeking the continued enjoyment of the matrimonial home, was allowed. She was permitted to reside in the said matrimonial home until further orders. The Petitioner has also challenged the Judgment and Order dated 2/2/2010 delivered by the learned Additional Sessions Judge, by which his Criminal Appeal No. 229 of 2009 challenging the interim order of the Magistrate was dismissed.

4 Respondent No. 2 in person while addressing the Court, pointed out an affidavit dated 18/1/2011 filed by the Petitioner in this petition. She then points out the third paragraph of the first page of the affidavit, which is at pages-125 and 126 of the petition paper book, to indicate that after filing of this petition, the petitioner and respondent No. 2 wife have settled the dispute amicably and are

residing together in the matrimonial home at 53, Pandurang Niwas, Shahid Bhagatsingh Marg, Colaba, Mumbai 400005.

5 She therefore, submits that this affidavit was filed by the petitioner- husband after both of them resolved their dispute and started living together. She then pointed out from page No. 136, which accompanies her own affidavit dated 1/8/2014 to indicate that after the filing of the affidavit by the husband on 18/1/2011, a child was born to respondent No. 2 since she started residing together with the petitioner. The birth certificate of the child issued by the Health Department of Kulgaon Badlapur Municipal Council dated 29/12/2012 is at page 136 of the petition paper book.

6 Respondent No. 2 therefore, submits that since the petitioner- husband has reconciled with her and presently, they are living together, this petition can be disposed of as being infructuous.

7 The learned APP appearing on behalf of respondent No. 1-State submits that considering the affidavit of the Petitioner dated 18/1/2011 and the affidavit of respondent No. 2 in person dated 1/8/2014, coupled with the fact that the birth certificate of the child after their compromise is placed on record, this petition can be disposed of by recording the statement of respondent No. 2 wife.

8 In the light of the above, this Petition is disposed of as being infructuous.

(RAVINDRA V.GHUGE, J)