

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 2183 OF 2014

Sunita Hiranman Sonawale

.....Petitioner

V/s.

Smt. Indrayani Dinkar Sonawale and others

....Respondents

Mr. M. M. Gadkari Advocate for Petitioners.

Mr. Anand Palande h/f Mr. V. N. Kanthe & Rebecca

Dias for Respondent nos. 1 & 2

Mr. A. R. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 13, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein questions the correctness and validity of the order dated 22/05/2014 passed by by 3rd Judicial Magistrate First Class, Vashi thereby rejecting the application filed by the Petitioner below Exhibit 16 seeking a permission to cross-examine the original complainant in D.V. Proceedings No. 134 of 2012 filed by the Respondent herein. It is a matter of record that this is a peculiar case where present petitioner happens to be the daughter-in-law of the original complainant no. 1 and the sister-in-law of no.

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2. Complaint was filed by mother-in-law of the present Petitioner under section 12 of Protection of Women from Domestic Violence Act, 2005. Complainant had filed an affidavit in evidence. The said affidavit was verified by the Rohini Dinkar Sonawale i.e. complainant no. 2, however, it appears that the recitals of affidavit would show that the said contentions were raised by original complainant no. 1 i.e. mother-in-law of the present petitioner. Affidavit was filed on 12/08/2013. Present petitioner had commenced with cross-examination. It appears from the records that learned Trial Court had noticed the errors in the affidavit in evidence and therefore orally directed the complainant to file a fresh affidavit of evidence. Petitioner herein had filed an application praying therein that the issues may be framed in view of the contents of the affidavit and then respondent be allowed to cross-examine the applicant, however, learned Magistrate was of the opinion that to save the valuable time of the Court, Petitioner herein should not proceed with the cross-examination and had denied the prayer for recalling the witness for cross-examination and had instead directed the present Petitioner to file a counter affidavit or cross-examination in the nature of affidavit.

4) Upon perusal of the order passed by 3rd Judicial Magistrate First Class,

Vashi, it is clear that provisions of Law of Evidence were mis-conceived by learned Magistrate. Learned Magistrate has probably mis-construed the provisions of section 28 (2) of Protection of Women from Domestic Violence Act, 2005.

5) Section 145 & 146 of the Indian Evidence Act contemplates as follows:

“145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him”.

“146. When a witness is cross-examined, he may in addition to the questions hereinbefore referred to, be asked any questions which tend-

- (1) to test his veracity,*
- (2) to discover who he is and what is his position in life, or*
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:”.*

6) Needless to say that accused has an inherent right of cross-examining the complainant as far as the previous statements in writing are concerned. In the present case, accused would have a right of cross-examine the complainant by confronting the complainant with the complaint as well as the affidavit in evidence. In the absence of cross-examination, it would be

difficult for the accused to bring on record the omissions and contradictions which may go to the root of the matter.

7) Section 147 of the Indian Evidence Act also contemplates as follows:

“147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto”.

8) The order passed by the learned Magistrate is in violation of the provisions of the Indian Evidence Act and hence following order:

(i) The order dated 22/05/2014 passed by 3rd Judicial Magistrate First Class, Vashi is hereby quashed and set aside.

(ii) Learned Magistrate shall recall the complainant/deponent who has filed affidavit in evidence for the purpose of cross-examination.

(iii) Accused would be at liberty to confront the complainant with the first affidavit as well as the subsequent affidavit filed by the deponent.

(iv) Needless to say that interim relief granted in this petition vide order dated 30/09/2014 stand vacated.

(v) Learned Magistrate shall proceed with the matter at the stage where it was stayed.

(vi) With these directions, petition stands disposed of.

(vii) Rule made absolute in the above terms.

(viii) Office to communicate this order to the concerned court, forthwith.

(SMT. SADHANA S. JADHAV, J.)