

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3422 OF 2015

Sau. Asmita Sudhir Patil

.....Petitioner
(Orig. Applicant)

V/s.

Shri. Sudhir Bhagwan Patil

.....Respondent
(Orig. Opponent)

* * * * *

Ms. Anjali R. Shiledar-Baxi, Advocate for the petitioner.

Mr. Kuldeep S. Patil, Advocate for respondent no.1.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 15TH JUNE, 2016.

P.C. :-

1). This petition challenges the order dated 21st July, 2015 passed by the Sessions Court, Sangli on Criminal Revision Application No. 66 of 2014 filed by the respondent, husband to challenge the order dated 27th April, 2011 passed by the trial Court.

2). The brief facts stated in the petition are that, the petitioner was married to the respondent as per the Hindu Vedic Rites on 7th July, 2007 at Miraj. Within a short time thereafter, she filed Misc.

Criminal Application No. 233 of 2007 in the Court of Judicial Magistrate First Class, Miraj under Section 125 of the Criminal Procedure Code for maintenance of Rs.1,500/-. In that application, she alleged that the mother of the respondent had demanded dowry and because the same was not given at the time of marriage, she was being abused. On 3rd September, 2007 compromise took place before the “Zunzar Committee” in which the parents of the petitioner allegedly agreed to give all the articles and money during Diwali and only thereafter she was permitted to enter the house. But the moment the petitioner entered the matrimonial house, the mother of the respondent threatened that she and the respondent would commit suicide if the desired articles were not given. She further alleged that, on 10th September, 2007 the family members of the respondent forcibly obtained her signatures on some papers.

3). The respondent had denied all the allegations. He had also contended that, the petitioner was infact twice married before the marriage with the respondent and atleast her second marriage was not dissolved by a decree of divorce. Consequently, her marriage to the petitioner was not legal and valid. The parties led their evidence on the application. After the evidence was closed, the petitioner filed an application for converting her application under Section 125 of Criminal Procedure Code (“Cr.P.C.” for short) to an application under the provisions of the Protection of Women from Domestic Violence Act, 2005. The reason for the application was

obvious. The petitioner had realised that, her application under Section 125 Cr.P.C. could not be maintained as her marriage with her earlier husband was not dissolved by a decree of Competent Court. The trial Court, allowed that application. But thereafter, there was neither any application to amend the pleadings nor an opportunity given to the respondent to file a reply thereto. Considering the scope of the proceedings under Section 125 of the Criminal Procedure Code and application for maintenance under the Domestic Violence Act and the procedure required to be followed under the two statutes, the trial Court could not have permitted the petitioner to convert the application under Section 125 Criminal Procedure Code to a petition under the Domestic Violence Act. The observations of the Sessions Court, on this aspect of the matter are correct and proper observations.

4). Ms. Baxi, the learned Advocate appearing for the petitioner submits that, the Sessions Court could have set aside the order and remanded the matter for hearing to the trial Court. There is no reason for remand of the matter, as the application for conversion can be allowed under no circumstances. Hence, I find no substance in the petition. The petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)