

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3528 OF 2015

Abubakar Bapusaheb Mulani	Petitioner
V/s.	
Vahida Begam Sayyed Liyakat Kazi & Anr.	Respondents

Mr. Sagar A. Joshi for the Petitioner.

Mr. Prabhakar Jadhav for Respondent No.1.

Smt. V.R. Bhonsale, A.P.P., for Respondent
No.2-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH JANUARY 2016.

P.C. :

1. Heard learned counsel for the Petitioner and learned counsel for Respondent No.1.

2. This Writ Petition takes an exception to the order passed by the 7th Judicial Magistrate, First Class, Pandharpur, on 12th November 2014, exhibiting certain documents produced by Respondent No.1. The only grievance raised by learned counsel for the Petitioner is that the documents were allowed to be exhibited after the cross-examination of Respondent No.1 was over. It is submitted that the evidence affidavit was filed by Respondent No.1 on 8th January 2008 in Miscellaneous Application No.464 of 2007 filed by her under Section 3 of Muslim Women Protection Act, 1986. On the basis of the said affidavit, she was cross-examined by learned counsel for the Petitioner and her cross-examination

was completed on 18th October 2008. Thereafter, on 29th October 2014, Respondent No.1 filed an application for exhibiting the documents, which were referred by her in her affidavit evidence and the said application was allowed by the Trial Court, after hearing both the parties, on 12th November 2014.

3. According to learned counsel for the Petitioner, the Trial Court has exhibited these documents merely because they were referred by Respondent No.1 in her evidence affidavit and they were the original documents. Particularly, grievance is raised in respect of the documents referred in the impugned order of the Trial Court from Para Nos.10 to 15. According to learned counsel for the Petitioner, unless an opportunity was given to the Petitioner to cross-examine Respondent No.1 in respect of these documents, the exhibition of the documents is not proper.

4. I find much substance in the submission advanced by learned counsel for the Petitioner. Even assuming that the documents were referred in evidence affidavit filed under Order 18 Rule 4 of C.P.C., in that case also, before the cross-examination commences, the step for exhibition of the documents should have been completed so that the Petitioner would have got the opportunity to cross-examine Respondent No.1 in respect of those documents. However, the documents are exhibited after the cross-examination of Respondent No.1 was completed and that too after more than 5 to 6 years and, therefore, it is necessary to offer an opportunity to the Petitioner to cross-examine Respondent No.1 in respect of those documents and thereafter only the Trial Court to take necessary decision whether to exhibit them or not. Hence, the order.

5. The Writ Petition is allowed. The impugned order passed by the

Trial Court is set aside in respect of the documents referred in its order from Para Nos.10 to 15. The Trial Court to give an opportunity to the Petitioner to cross-examine Respondent No.1 in respect of those documents and thereafter the Trial Court to decide afresh whether these documents are to be exhibited or not.

6. The Writ Petition is disposed of in above terms.

7. As the matter is pending before the Trial Court since the year 2007, it is expected that the Trial Court should expedite the hearing of the matter and both the parties to co-operate in the matter.

[DR. SHALINI PHANSALKAR-JOSHI, J.]