

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO. 3741 OF 2015

Mr. Amin S/o Yakub Ansari

.....Petitioner

V/s.

Smt. Shabana W/o Amin Ansari and another

....Respondents

Mr. Ganesh Bhujbal Advocate for Petitioner.

Mr. Y. P. Bavkar Advocate for Respondent no. 1

Mrs. A. A. Mane APP for the State.

CORAM : RAVINDRA V. GHUGE, J.**DATED : JULY 4, 2016.****PC :**

- 1) Heard respective counsel.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) The Petitioner is aggrieved by the order dated 31/07/2015 by which his Application Exhibit 7 has been rejected by the learned Metropolitan Magistrate, 69th Court, Mazgaon (Sewree) Mumbai in C.C. No. 33/DV2014.

4) The petitioner contends that his wife suffers from a particular disease which has been mentioned in the Application Exhibit 7. On account of the said disease, there was no co-habitation. This issue needs to be properly considered and for which a direction to refer the Respondent/wife for medical examination is necessary.

5) He further submits that during the pendency of the proceedings in the Court below, an order of payment of maintenance allowance has been passed by the Competent Court under the provisions of the Protection of Women from Domestic Violence Act, 2005. He therefore submits that though the Petitioner may be in arrears, the issue as to whether the maintenance allowance could have been granted or not, is yet to be decided.

6) The learned Advocate for the Respondent has opposed this petition contending that the Petitioner himself has certain medical issues as a consequence of which, he is not capable of having any sexual intercourse. In fact, it is the Petitioner who needs to be examined. Though the Respondent has stated in her affidavit dated 07/05/2015 that she is willing to undergo any test, the said statement cannot be read in isolation since it is in tune with the earlier pleading that the Petitioner himself would be required to be referred

for medical examination.

7) The learned counsel further points out from the medical report dated 12/03/2014 of the Nair Hospital, Municipal Corporation of Greater Mumbai, that it would indicate that the Respondent/wife was subjected to medical examination and the said examination did not reveal any disease, as is contended by the petitioner. He therefore submits that she need not be once again referred for medical examination which is not only insulting, but is aimed at delaying the matter and making the Respondent suffer rigours of litigation.

8) I have considered the submissions of the learned Advocates.

9) There is no dispute that the Respondent has once undergone the medical examination which was conducted by the Gynaecology Department of Nair Hospital. The report indicates that the Respondent has not been found with any medical issues as has been complained of by the Petitioner.

10) The learned Court below, in my view has rightly noted that the Petitioner and the Respondent lived as husband and wife from the date of marriage i.e. 11/09/2012 till February 2014 when the Respondent was driven out of her marital home. The Petitioner did not voice any grievance about the

health of the wife in this period.

11) Considering the above, I do not find that the impugned order could termed as being perverse or erroneous. This petition is devoid of merits is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)