

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4217 OF 2016

Abdul Aziz Hussain Shah Patel & Anr. ... Petitioners
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Nikhil Chaudhari i/b. Mr. Milind Nakashe, Advocate for the petitioners.
Mrs. P.P. Shinde, APP for the respondent/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **6th December, 2016**

P.C.:

Not on board. Upon mentioning, taken on board.

2. This Writ Petition is filed by the father and daughter against respondent no. 2, who claims to be husband of petitioner no. 2, challenging the order dated 20th October, 2016 passed by learned Judicial Magistrate First Class, Court No. 4, Malegaon while entertaining the application under section 97 of Cr. P.C. In the Application filed under section 97 of Cr. P.C., respondent no. 2 has prayed that search warrant be issued against non-applicant no. 1/petitioner no. 1 and petitioner no. 2, i.e., his wife is to be produced before the learned Judicial Magistrate First Class. After considering the documents, i.e., Nikanama/marriage certificate produced before the Court, the learned Magistrate has issued notices to the non-applicants, i.e., petitioner nos. 1 and 2 and directed them to remain present before the Court on 27th October, 2016. However,

as per the submissions of learned counsel for the petitioners, the said notice was received by the petitioners on 29th November, 2016, therefore, they could not attend the Court of learned Magistrate.

3. The learned counsel for the petitioners has submitted that it was the duty of the learned Magistrate to apply the mind and after considering the material available with a sense of responsibility, he should have considered the Application under section 97 of Cr. P.C. In support of his submissions, he relied on the judgment of Andhra Pradesh High Court in the case of **Ashok Thadani vs. Ramesh K. Advani & Ors., delivered on 23rd April, 1982, reported in 1982 Cri. L.J. 1446.**

4. I have gone through the order passed by the learned Magistrate dated 20th October, 2016. The scope of Section 97 is very limited to production of the person before the Court who was confined. The order discloses one Nikanama/marriage certificate, affidavit of petitioner no. 2 dated 22nd January, 2016 about her marriage with respondent no. 2. It shows that learned Magistrate has applied mind and has sent notices to the non-applicants/petitioners to appear before the Court. After going through paragraph nos. 11 and 12 of the judgment (supra), I am of the view that the ratio in the said case is not applicable to the present case, as the learned Magistrate has applied the mind. From the title of the petition,

it is clear that petitioner no. 2 is major and is of 22 years old. Petitioner no. 2 to remain present before the Magistrate and tell the true facts.

5. Writ Petition is dismissed in limine.

(MRIDULA BHATKAR, J.)