

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5741 OF 2016

Tarannum Fathema Asad Khan

..PETITIONER

VERSUS

Asad Khan Asif Khan

..RESPONDENT

....
Mr. M.M. Parghane, Advocate for petitioner.

Mr. Quadri Taher Ali, Advocate for respondent.

....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 31st JULY, 2017**

ORDER :

1. The petitioner is aggrieved by the order dated 11th May, 2016 passed by the learned Judge, Family Court, Nanded by which application Exhibit 13 filed by the petitioner / original defendant for framing preliminary issue has been rejected.

2. It is the case of the petitioner that she was fourteen years old when the respondent committed physical abuses against her and consequentially an offence under Section 376 of the Indian Penal Code has been registered against him and the criminal trial is in progress. By Petition (B) No. 1 of 2016 filed by the respondent before the Family Court, he seeks a declaration that he has married the petitioner and the marriage is legally performed.

3. By application Exhibit 13, the petitioner prays that following two issues need to be framed:

“1) Whether the suit instituted by alleged rapist against the victim sexually abused by himself, for declaration as his legally wedded wife and mandatory injunction to cohabit with him is tenable?

2) Whether the suit for declaration of valid marriage and declaring the parties character as husband and wife of each other without any prima facie documentary proof is tenable?”

4. It is informed that the plaintiff before the Family Court has already concluded his evidence and the petitioner / original defendant has also led oral evidence, but is awaiting cross-examination. It could not be ignored that the issue before the Family Court is only as regards whether a legal marriage was performed between the parties. While considering this aspect, the issue as regards an offence committed by the applicant under Section 376 is not before the Family Court.

5. I find that the Family Court has taken a pragmatic view in considering all hardships caused to the petitioner / original defendant lady, if the two issues proposed by the petitioner are to be framed. One of the issues is of the onus and burden of proving a legal and subsisting marriage that lies on

the shoulders of the respondent / original plaintiff and unless he proves the said aspect, the case before the Family Court would not succeed.

6. Considering the above, I do not find that the impugned order can be termed as perverse or erroneous. The petition is devoid of merits and therefore is dismissed.

(RAVINDRA V GHUGE, J.)

SSD