

30th November, 2016. To this effect he had produced a letter dated 9th December, 2016 issued by the school where he was employed before the Sessions Court alongwith application for grant of permission to produce document dated 7th February, 2017. The respondent upon being asked to file her say, has contended that the production of these documents is late and the application was not supported by an affidavit and was without any verification. Therefore the application should be rejected. Upon the said application the Sessions Court passed an order which states as follows :

“Read application and say, Documents sought to be produced is received on 9th December, 2016. It appears that the document has nexus with the dispute. Hence production allowed.”

3. This order was passed on 4th February, 2017 where as the impugned order dated 17th February, 2017 is obviously passed thereafter. At the material time before the trial Court there was no challenge to the letter itself or the fact that the letter had been issued by the said school where the petitioner herein was employed at the material time. Yet, the aforesaid contention of the petitioner is not seen to have been considered in the order. It is not in dispute that the document was in fact sought to be produced before the Sessions Court and the Sessions Court did allow production since the document had nexus with the dispute.

4. Mr. Patil learned Counsel appearing on behalf of the first respondent questioned this very plea taken up viz. that the petitioner's services had been discontinued. He submits that the petitioner is in arrears of over Rs. 2,00,000/- . Learned Counsel for the petitioner pointed out that the arrears as of 2nd September, 2016 was Rs.1,58,000/-. Thereafter in November, 2016 the services of the petitioner were discontinued since he was declared as surplus. In the circumstances, it is his contention that he is presently unemployed and the order does not take into consideration inability to comply with the quantum order to be paid. However, he says that he will continue to pay the sum of Rs.2000/- per month to respondent no.1.

5. The limited challenge in this petition and as canvassed before me is the fact that the effect of the aforesaid letter was not considered. The effect of cessation of employment has not been taken into account while passing the impugned order. The matter can therefore be remanded to the Sessions Court with a direction that the contention of the petitioner as to cessation of his employment may be considered. Meanwhile the Advocate for the petitioner states that pending disposal of the Criminal Appeal he will deposit a sum of Rs.80,000/- within a period of four months from today in four monthly equal installments of Rs.20,000/- each. The first of such deposits will be made within three weeks from today i.e. before 4th July, 2017 and thereafter he would deposit further sums of Rs.20,000/- each in the trial Court before the 4th day of August, September and October, 2017. In addition he will continue to pay Rs.2000/- per month.

6. Accordingly, I pass the following order :

(i) The order dated 17th February, 2017 to the extent it confirms the order dated 16th January, 2016 shall remain stayed till the disposal of the Criminal appeal.

(ii) The Criminal Appeal no. 155 of 2016 is restored to the file of the Sessions Court, Kolhapur for the limited purpose of considering the fact of the document at D-12 which is a letter dated 9th December, 2016 bearing no. 799/2016-1 received from Smt. Gulbai Muluk Irani Kanya Shala.

(iii) The Sessions Court shall dispose of the appeal considering the aforesaid document at Exhibit D-12 at its earliest convenience without being influenced by the observation of the Court. It is made clear that this Court has not considered any other aspect of the matter except for non-consideration of Exhibit D-12.

(iv) In the meantime the petitioner shall continue to pay a sum of Rs.2000/- per month as interim maintenance to the first respondent and he will deposit a sum of Rs.80,000/- within a period of four months from today in four monthly equal installments of Rs.20,000/- each. The first of such deposits will be made within three weeks from today i.e. before 4th July, 2017 and thereafter he would deposit further sums of Rs.20,000/- each in

the trial Court before the 4th day of August, September and October, 2017.

(vi) All parties to act on an authenticated copy of this order.

(vii) Petition is disposed of in the above terms.

(A. K. MENON, J.)