

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1427 OF 2014

Mrs. Roshan Cyrus Mistry and anr. : Petitioners.
Versus
Mr. Cyrus Homi Mistry and anr. : Respondents.

**ALONG WITH
CRIMINAL APPLICATION NO.181 OF 2016
IN
CRIMINAL WRIT PETITION NO.1427 OF 2014**

Cyrs Homi Mistry : Applicant/Respondent No.1.

in the matter between

Roshan Cyrus Mistry and anr. : Petitioners.
versus
Cyrs Homi Mistry and anr. : Respondents.

Mrs. Tejas Kapre i/by Mr. J S Kapre for the original Petitioners.
Mr. Varad Deore for the Applicant – original Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 24th March 2017

P.C.

1 The above Petition came to be admitted by a learned Single Judge of this court on 23/09/2015. In the above Petition, Criminal Application No.,181 of 2016 has been filed by the Respondent No.1– husband seeking certain reliefs. It is at the hearing of the said Criminal Application that the learned counsel for the parties agreed that they have no objection to the above Petition itself being taken up for hearing, that is how the above Petition is taken up for hearing.

2 The above Writ Petition challenges the orders passed on Exhibits 66, 80 and 81 by the learned Judge of the Family Court No.2, Pune. The said orders are the orders dated 10/03/2014 passed on Exhibit 66 by which order a “No Cross Order” came to be passed against the Petitioner herein, the order dated 10/03/2014 passed on Exhibit 80 by which order the application filed by the Petitioner, on the ground that the cross examination of the Respondent No.1 should be deferred till such time as he clears the arrears of maintenance, came to be rejected by the Trial Court on the ground that the the proceedings are more than 5 years old and therefore cannot be kept on lingering indefinitely, and the order dated 10/03/2014 passed on Exhibit 81 by which order the application filed by the Petitioner for stay of the order passed on Exhibit 80 came to be rejected by the Trial Court.

3 The said orders have been passed in the proceedings filed by the Petitioner – wife under Section 125 of the Criminal Procedure Code against the Respondent No.1 – husband. It is not necessary to further dilate on the said aspect. Suffice it would be to state that the order dated 10/03/2014 on Exhibit 66 was passed as the Petitioner wife on 10/03/2014 had refused to cross examine the Respondent No.1 – husband whose affidavit of examination-in-chief was taken on record on the said day. Thereafter two orders both dated 10/03/2014 on Exhibits 80 and 81 came to be passed.

4 In so far as the order dated 10/03/2014 passed on Exhibit 66 is concerned, in my view, it would be just and proper to set aside the said order dated 10/03/2014 passed by Exhibit 66 and permit the Petitioner – wife to cross examine the Respondent No.1 – husband considering the fact that the application is filed under Section 125 of the Criminal Procedure Code by the Petitioner wife claiming maintenance. The learned counsel, appearing for the Petitioner and Respondent No.1 are agreeable to the said course of action being followed. In so far as the orders dated 10/03/2014 passed on Exhibits 80 and 81 are concerned, the order passed on Exhibit 80 records that the request of the Petitioner – wife to defer the cross examination of the Respondent No.1– husband cannot be acceded to as the application filed by the Petitioner – wife under Section 125 of the Criminal Procedure Code is more than 5 years old. In my view, the challenge to the said orders both dated 10/03/2014 passed on Exhibit 80 and 81 would now not survive in view of the setting aside of the order dated 10/03/2014 passed on Exhibit 66 whereby the Petitioner – wife is now permitted to cross examine the Respondent No.1– husband. Hence it would be just and proper to dispose of the above Writ Petition by issuing the following directions :-

- 1] On the impugned order dated 10/03/2014 passed on
Exhibit 66 being set aside, the Petitioner – wife would

be entitled to cross examine the Respondent No.1– husband. The parties to appear before the Family Court No.2, Pune on 05/04/2017 with a copy of the instant order. The Trial Court i.e. the learned Judge of the Family Court No.2, Pune to thereafter fix the schedule for the cross examination of the Respondent No.1– husband, however, complete the same expeditiously.

- 2] It would be open for the Petitioner – wife, if there are any arrears of maintenance, to make an appropriate application for recovery of the same.
- 3] In view of the instant order passed in the above Writ Petition, Criminal Application No.181 of 2016 filed by the Respondent No.1– husband would not survive and the same to accordingly stand disposed of as such. It would be open for the Respondent No.1– husband to file an application before the learned Judge of the Family Court No.2, Pune, if so advised. If any such application is filed, the same would be dealt with on its own merits and in accordance with law.

- 4] The above Writ Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]