

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

CRIMINAL WRIT PETITION NO.4771 OF 2017

Minoti Subhash Anand .. Petitioner
Vs.
Subhash Manoharlal Anand & Anr. .. Respondents

Mr.Rohan Cama i/by Ms.Sapna Rachure for the petitioner.
Mr.Pandit Kasar for the respondent no.1.

CORAM : R.D. DHANUKA, J.
DATE : 23rd November 2017

P.C.:

. Leave to amend is granted to the petitioner to add the grounds in the petition and to insert the impugned order as one of the exhibits to the petition. Amendment to be carried out within one week from today.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 9th November 2011 passed by the Family Court No.2, Bandra, Mumbai disposing of the applications at Exhibits-66, 68 and 70.

3. Mr.Cama, learned counsel appearing for the petitioner, on instructions, states that in so far as the application at Exhibit-68 is concerned, the petitioner does not seek to press that application in on going proceedings but seeks liberty to make that application in A-1215 of 2011 and B-31 of 2011. The petitioner is at liberty to make that application in those proceedings. Impugned order to this extent is modified.

4. In so far as the application at Exhibit-66 is concerned, a perusal of the record indicates that the petitioner had filed a pursis dated 16th June 2017 before the Family Court stating that she did not intend to lead any oral evidence provided the DVD was admitted by the respondent. It is the case of the petitioner that the said DVD contains recording of the alleged cruelty meted by the respondent upon the petitioner. The said application of the petitioner was opposed by the respondent. In reply dated 20th June 2017, the respondent denied the contents of CD/DVD attached to the said application. In view of the denial of contents of the CD, the petitioner sought an opportunity to lead evidence before the Family Court to prove contents of CD/DVD.

5. Learned Judge of the Family Court in the impugned order, in so far as the application at Exhibit-66 is concerned, has held that if the petitioner wanted to prove the contents of the CD/DVD, she can cross-examine the respondent and prove those contents and if she fails, then she can apply for re-opening of her evidence for proving contents of the CD/DVD and has accordingly rejected the said application.

6. In my view, the learned Judge of the Family Court could not have rejected the application at Exhibit-66 for the reason that the pursis filed by the petitioner clearly indicates that her statement not to lead evidence was conditional and not absolute. The respondent has disputed the contents of the said CD/DVD admittedly. In my view, the reply of the respondent will have to be read with the pursis filed by the petitioner. It is thus clear that since the respondent had disputed the contents in the CD/DVD, the petitioner had not closed her evidence in respect of the contents of the said CD/DVD.

7. Mr.Cama, learned counsel appearing for the petitioner states that the contents of the said CD/DVD will have to be proved by the petitioner by examining her two sons. Statement is accepted.

8. The petitioner is permitted to prove the contents and existence of the CD/DVD by examining her two sons whose names are already mentioned in the application filed before the Family Court. It is agreed that the petitioner will not enter the witness box to prove the contents in the CD/DVD or otherwise.

9. In view of the fact that the respondent has already filed his affidavit in lieu of examination-in-chief, the respondent would be at liberty to file additional affidavit in lieu of examination-in-chief after evidence of the sons of the petitioner is over. The order of the learned Judge of the Family Court, in so far as the application at Exhibit-66 is concerned, is modified to the aforesaid extent.

10. Writ petition is disposed of in aforesaid terms. No order as to costs.

11. Hearing of three proceedings pending between the parties before the Family Court Judge is expedited. Considering the age of the parties, learned Judge of the Family Court shall make an endeavour to dispose of the proceedings within one year from today. Both the parties are directed to co-operate with each other and with the learned Judge of the Family Court in expeditious disposal of the proceedings. The Judge of the Family Court shall not grant unnecessary adjournment to any of the parties.

R.D. DHANUKA, J.