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

CRIMINAL APPLICATION NO.417 OF 2016

Asia Tabassum w/o Sharik Tufel,
aged about 26 years, Occ: Nil,
r/o. Backside of Shyam Lawn,
Jafar Nagar, Nagpur.

..APPLICANT

VERSUS

1. Sharique Tufail s/o Mohd.
Jamil Ahmed, aged about
32 years, Occ: Service,
R/o. Plot No. 02,
Tirupati Nagar, Avasthi Chowk,
Nagpur.

2. State of Maharashtra through
its Police Station Officer,
Police Station, Gittikhadan,
Nagpur.

..RESPONDENTS

Mr Ravi R. Shrivastava, Advocate for applicant;
Mr J.M. Gandhi with Miss A.P. Gupta, Advocates for
respondent No.1;
Mr N.H. Joshi, Addl. Public Prosecutor for
respondent/State

CORAM : N.W. SAMBRE, J.

DATE : 15th MARCH, 2017

ORAL ORDER :

The present applicant was married to
respondent No.1 on 8th June, 2011 and out of
matrimonial discord, proceedings being Petition No.
E-72 of 2013 under Section 125 of the Code of

(2)

Criminal Procedure for grant of maintenance came to be filed before Family Court at Nagpur. In the said proceedings, I am informed at bar that amount of Rs.10,000/- per month is ordered to be paid towards interim maintenance w.e.f. 18th April, 2013 till decision of main petition vide order below Exhibit-12. The Court has already commenced proceedings on main application and same has reached at the stage of recording of evidence. On 20th June, 2013 learned Judge, Family Court passed two orders; one – on application for issuance of witness summons to the accountant of Yeshwantrao Chavan College of Engineering and another, for grant of adjournment.

2. Mr. Shrivastava, learned Counsel for the applicant would submit that the order of rejection of prayer for issuance of witness summons to accountant of the college is not with an intention to fill in lacuna, much less lacuna remained in the evidence of Principal of the college, who was examined at Exhibit-81 as PW-2. According to him, said witness was not author of the salary

(3)

certificate and salary record is in the electronic form, which was not prepared by the said witness. According to him, list of witnesses furnished by the applicant and prayer for issuance of witness summons to the said witness should have been granted by adjourning the matter. According to him, the applicant needs to be granted an opportunity to lead his evidence.

3. Per contra, Mr. Gandhi, learned Counsel for the respondent-husband would submit that the order is just and proper in the circumstances of the case in hand, as the applicant who is enjoying interim maintenance, is trying to prolong the proceedings in question. According to him, though respondent No.1 has admitted the document qua salary certificate, still the applicant has sought summons to the witness, with intention to prolong the litigation. According to him, the prayer of the applicant is rightly rejected by the Family Court, as unnecessarily sought adjournment before the said Court.

(4)

4. Considered the rival submissions and perused evidence of PW-2 Dr. Udaykumar. Dr. Udaykumar in his cross examination has stated that account section of college prepares salary record which is in the electronic form and principal puts his signature on the same. It is this statement which perhaps prompted applicant to pray for issuance of witness summons to the accountant who has prepared salary certificate in the electronic form. The prayer for summoning such witness, in my opinion, should have been granted by learned Family Court, particularly in the backdrop of evidence of PW-2 being not author of electronic record. The observation that summoning of said witness is with intention to fill in lacuna is misplaced, as the person who is author of the salary certificate without being examined, cannot be exhibited and declared to be proved. As such, in my opinion, the application needs to be allowed.

5. The application moved by the applicant for issuance of witness summons to the accountant of Yashwantrao Chavan College of Engineering needs to

(5)

be allowed by quashing the order dated 20th June, 2016. The applicant is permitted to examine said witness after issuance of witness summons to him. Learned Family Court shall make every endeavour to decide the matter expeditiously, in any case within period of six months from the date of communication of this order.

6. With the above observations, the application stands allowed and disposed of.

(N.W. SAMBRE, J.)

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