

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

CRIMINAL WRIT PETITION NO.568 OF 2017

(Pradhnayawant Shrirang Patode vs. Sau. Deepmala Pradhnayawant Patode and another)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders    Court's or Judge's orders  
or directions and Registrar's orders.

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Shri E.N. Quazi, Advocate for petitioner.

Shri A.R. Deshpande, Advocate for respondent no.1.

Smt. S.S. Jachak, Additional Public Prosecutor for  
respondent no.2.

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CORAM : P.N. DESHMUKH, J.

DATED : SEPTEMBER 18, 2017

Challenge in this petition is to order dated 21/3/2017 passed by learned Additional Sessions Judge, Akola in Criminal Revision No. 197/2016 wherein order dated 16/11/2016 passed by learned Magistrate is upheld. By the said order, learned Magistrate has rejected the application filed by petitioner under Section 125(4) of Code of Criminal Procedure.

Facts involved in the petition are that according to petitioner, respondent no.1 is living adulterous life. He, therefore, filed application vide Exh. 15 and thereby contended that his wife is maintaining extra-marital relations with one Vishal Parulekar alias Vishal Ganpat Sawant and R.C.C. No. 1046/2015 is pending before Judicial Magistrate, First Class, Pimpri against respondent wife and said Vishal Parulekar alias Vishal Sawant. It is further alleged that he has also filed

separate criminal complaint being R.C.C. No.646/2015 before Judicial Magistrate, First Class, Pimpri for offences punishable under Sections 497 and 507 of Indian Penal Code. It is contended that in view of the mandate of Section 125(4) of the Code of Criminal Procedure, respondent wife living adulterous life is not entitled to receive maintenance.

The learned trial Court found that respondent wife was discharged by the Court for the offences complained of against her as there is no sufficient material on record to establish illicit relationship. Accordingly, the application came to be rejected, against which petitioner preferred revision, which is dismissed by impugned order.

It is noted that to establish his case of respondent wife living adulterous life, petitioner has placed before learned trial Court documents consisting of criminal complaint being R.C.C. No. 1046/2015 in which concerned learned Magistrate had issued process for the offence punishable under Section 497 of Indian Penal Code against Vishal Parulekar alias Vishal Sawant with whom respondent no.1 is alleged to have indulged into extra marital relations. Said complaint thereafter appears to be dismissed for want of sufficient material. Respondent wife thereafter initiated maintenance proceedings wherein petitioner took defence of her living in adultery and to establish the same, apart from other documents, does not appear to have placed on record anything and in that event, learned trial Court rejected his application (Exh. 15). It is material to note that

though petitioner appears to have not placed on record any document to establish his defence, his evidence is not found to be recorded till application (Exh. 15) is rejected. When husband raises such defence in the proceedings for grant of maintenance, burden is upon him to prove satisfactorily that wife is living in adultery and only on establishing this fact, wife would be disentitled for maintenance. Mere allegation by husband without bringing on record evidence or corroborative testimony is of no avail to accept his case that wife is living in adultery. In that view of the matter, it is found necessary to give opportunity to petitioner to establish his case as aforesaid by giving liberty to lead his evidence and to bring on record corroborative evidence to establish that respondent no.1 is living in adultery.

During the course of submissions, learned Counsel for petitioner has submitted that to cut short the controversy, petitioner be granted liberty to lead evidence in support of his case to establish that respondent no.1 is living in adultery. It is further submitted that in the event such liberty is granted to petitioner, he shall not claim quashing and setting aside of the impugned orders as has been prayed in the present petition.

Shri Deshpande, Learned Counsel for respondent no.1, has submitted that after petitioner's evidence was concluded, application under Section 125(4) of Code of Criminal Procedure was moved, which came to be rejected by both the Courts below.

In that view of the matter, petition is liable to be dismissed by granting liberty in favour of petitioner to file necessary application for recording evidence of his witnesses, names of whom shall be mentioned in the application, to prove his defence. If such application is made, learned trial Court shall consider the same and considering the fact that proceedings before learned trial Court are stayed for a considerable time, shall decide the proceedings expeditiously, preferably within six months from the date of receipt of writ of this Court.

The petition is accordingly dismissed with liberty as aforesaid. No order as to costs.

JUDGE

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