

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8378 OF 2016

Sau. Savita Dashrath Wagh
Age 35 years, Occ. Nil
R/o C/o Sadashiv Vitthal Vighe
13 Bungalows, Kopargaon,
Dist. Ahmednagar. ..Petitioner

Versus

Dashrath Damodhar Wagh
Age 42 years, Occ. Service
At present R/o Pardhade
Railway Station, Pachora,
District Jalgaon. ..Respondent

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Advocate for Petitioner : Shri Ubale M.B.
Advocate for Respondent : Shri Kadu S.B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 08, 2018

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ORAL JUDGMENT :-

1. Heard the learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the orders dated 8.7.2016, 11.7.2016 and 19.7.2016 passed by the trial Court in HMP No. 4 of 2015. The petitioner has putforth prayer clause (A) in this petition, which reads as under:-

"(A) To quash and set aside the impugned orders passed by the learned Civil Judge S.D., Kopargaon, Dist. Ahmednagar, below Exhs. 46, 48, 49 and 50 in H.M.P.No.4/2015, dated 8.7.2016, 11.7.2016 and 19.7.2016 respectively, and to allow the pursis / applications and prayer respectively filed / made by the petitioner, and the petitioner may kindly be permitted to examine the witnesses in support of her case, as per application vide Exh.48. The petitioner may also kindly be permitted to cross-examine the respondent, by issuing an appropriate writ, order or direction, as the case may be."

5. Since the petitioner prayed for staying the proceedings initiated by her, seeking restitution of conjugal rights, this Court has, by order dated 3.8.2016, stayed the proceedings.

6. There is no dispute that after the petitioner examined herself, she moved an application Exhibit 48 seeking issuance of summons to two witnesses, namely, Rajendra Sukhadeo Pagare and Arun Bhagwanta Ranshur, who are her own witnesses. Since a list of witnesses was not submitted, the trial Court rejected Exhibit 48.

Prior thereto, the trial Court by order dated 8.7.2016, did not allow the petitioner to file a list of witnesses as 'the stage was already over'. The purshis dated 8.7.2016, mentioning the names of Rajendra, Arun along with Ajay Sadashiv Dighe as witnesses was rejected.

7. On 19.7.2016, the petitioner prayed for leave to examine her witnesses and further prayed that as the petitioner desires to approach the High Court, an opportunity be given. By order dated 19.7.2016, the said application Exhibit 50 was rejected. On the same date, by order dated 19.7.2016, the witness of the respondent was discharged by the trial Court recording that the petitioner's Advocate has not cross-examined him.

8. Learned counsel for the respondent has strenuously supported the impugned orders. In the alternative, he submits that if this Court is inclined to entertain the petition, the maintenance amount of Rs.7,000/- per month, paid by the petitioner from the date of the filing of this petition, which is 1.8.2016, till the passing of this order should be adjusted for the said duration of about 17 months as the petitioner has got the proceedings stayed and at the same time has received the maintenance amount.

9. I find that the trial Court had taken a pedantic view in this matter. When the petitioner had submitted a purshis containing her list of witnesses, the trial Court should have allowed the petitioner to examine the witnesses by ensuring that the proceedings are not delayed. HMP No. 4 of 2015 has been instituted on 5.1.2015 and as such, it could not be said that the petitioner was trying to delay the proceedings. The order dated 8.7.2016, therefore, is quashed and set aside.

10. It is obvious that instead of examining her witnesses, the petitioner moved application Exhibit 48 seeking issuance of summons. Said application was rejected by the trial Court on the ground that when one witness was examined on 11.7.2016, application for issuance of summons should not have been filed.

11. I do not find that the view taken by the trial Court could be sustained for the reason that the petitioner cannot be prevented from examining her witnesses. The impugned order dated 11.7.2016, therefore, is quashed and set aside. Consequentially, the order dated 19.7.2016 passed by the trial Court refusing an adjournment to the petitioner to cross examine the witness of the respondent, who was examined on the same date, is unsustainable and therefore, quashed and set aside.

12. This petition is, therefore, partly allowed. The petitioner is permitted to examine her remaining two witnesses, namely, Rajendra and Arun, expeditiously and preferably on two dates on which the matter would be posted, of course, subject to the cross-examination by the defendant and adjournments sought by the defendant, if any. As the proceedings below were stayed by this Court at the request of the petitioner, the maintenance amount paid by the respondent / husband to the petitioner / wife for the period 1.8.2016 till 31.12.2017, which is a period of about 17 months, would be adjusted in the further period of 17 months or till the decision of the trial Court in HMP No.4 of 2014, whichever is earlier.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d