

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

CRIMINAL WRIT PETITION NO.1389 OF 2017

1. Sau. Sarita W/o Dhananjay Kanakdande,
Age- 36 years, Occu. Household,
2. Akansha D/o Dhananjay Kanakdande,
Age- 14 years, Occu. Education,
3. Brijesh S/o Dhananjay Kanakdande,
Age- 11 years, Occu. Education,
4. Arti D/o Dhananjay Kanakdande,
Age- 8 years, Occu. Education,

The petitioner Nos.2 to 4 being minor
Through petitioner No.1 - Natural
Guardian Mother
All R/o Berali, Tq. Loha,
Dist. Nanded.

... **Petitioners**

Versus

Dhananjay S/o Balasaheb Kanakdande,
Age- 38 years, Occu. Agril.,
R/o Berali, Tq. Loha,
Dist. Nanded.

... **Respondent**

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Mr. A.M.Gaikwad, Advocate for Petitioners
Mr. P.P.Uttarwar, Advocate for Respondent

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CORAM : MANGESH S. PATIL, J.

RESERVED ON : 11.07.2018

PRONOUNCED ON : 06.08.2018

JUDGMENT :-

Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. Only a short question arises for determination in this Writ Petition as to whether asking a wife who has lodged a proceeding claiming maintenance under Section 125 of the Cr.P.C. can be compelled to give voice sample and would such a direction be violative of article 20(3) of the Constitution of India.

3. The petitioner No.1 is the wife of the respondent. The rest of the petitioners are their children born out of wed lock. After a marital discord the petitioners started residing separately and filed a proceeding for maintenance under Section 125 of the Cr.P.C. in the Family Court at Nanded against the respondent. The respondent inter alia contended, by way of defence that the petitioner No.1 was leading adulterous life and was not entitled to claim maintenance in view of sub Section 4 of Section 125 of the Cr.P.C.

4. In order to substantiate the defence, the respondent examined his brother as a witness. During the testimony of his brother a memory card was produced (Exh.104) with its transcript (Exh.106). According to this witness, it contained telephonic conversation between the petitioner No.1 and this witness wherein she allegedly had offered to indulge in sex with him. During his cross-examination the fact that there was such a telephonic conversation was denied on behalf of the petitioners. The respondent therefore submitted an application (Exh.117) and solicited a direction for sending the memory card (Exh.104) for voice analysis to an expert and also solicited a direction against petitioner No.1 to give a voice sample. The petitioners opposed the application. The learned Judge of the Family Court after hearing both the sides passed the order allowing the application. Hence, this Petition.

5. The learned advocate for the petitioners vehemently submitted that it is a summary proceeding

wherein the petitioners who are destitute are claiming maintenance under a speedy remedy provided in Section 125 of the Cr.P.C. The request was being made at the fag end of the proceeding. If the course is to be followed it would protract the decision, depriving the petitioners of their claim.

6. The learned advocate for the petitioners also submitted that asking the petitioner No.1 to give a voice sample would amount to testimonial compulsion and is violative of article 20(3) of the Constitution of India.

7. The learned advocate for the respondent submitted that the learned Judge of the Family Court has considered all the aspects of the matter and has rightly allowed the application directing voice analysis. It does not constitute testimonial compulsion. It does not compel petitioner No.1 to confess anything but only requires her to give a sample of her voice and the rest would be determined on the basis of the analysis. The learned advocate also submitted that it is always difficult to prove that a person is living in adultery and

in the peculiar facts and circumstances the respondent has the only opportunity to bring on record some evidence may be in bits and pieces to corroborate his contention about adulterous life of petitioner No.1. The learned advocate would further point out that there is no intention of protracting the decision. In fact the learned Family Court Judge has fixed interim maintenance which is being paid to the children that is the petitioner Nos.2 to 4 and the Writ Petition may be dismissed.

8. As far as the facts are concerned, the respondent is coming with a defence to which he is entitled to and has contended that the petitioner No.1 is leading adulterous life. To substantiate his contention he has examined his brother as a witness who has produced a memory card (Exh.104) which according to him contained a conversation between him and the petitioner No.1. According to him she had offered to have sexual relations with him. Therefore, as far as the factual aspect is concerned, this pieces of evidence is

indeed relevant to the matter in controversy.

9. The question regarding scope and ambit of article 20(3) has been decided by a constitutional bench of the Supreme Court in the case of ***State of Bombay Vs. Kathi Kalu Oghad ; AIR 1961 SC 1808***. The question has also been considered and decided by the Supreme Court in several other Cases like ***R.M.Malkani Vs. State of Maharashtra ; AIR 1973 SC 157*** and ***State of Karnataka Vs. Selvi ; (2010) 7 SCC 263***. Suffice for the purpose to observe that giving samples of hand writing or signature or even voice or giving blood sample etc. would not be violative of article 20(3) of the Constitution of India. Compelling a person to give his voice sample is nothing but physical examination falling within the meaning of 'measurement' and no testimonial compulsion is involved in it, as comprehended under Section 54 and Section 311-A of the Cr.P.C. Though strictly speaking these provisions are not applicable in the matter in hand since applicant is not an accused, still, the principle would be applicable even to the

matter in hand. Taking into account all the aforementioned decisions, it cannot be said that asking the petitioner to give a voice sample amounts to testimonial compulsion and is violative of Article 20(3) of the Constitution of India. Therefore, the submission of the learned advocate for the petitioners that the petitioner No.1 cannot be compelled to give voice sample is not legally tenable.

10. As far as the aspect of propriety in taking recourse to and resorting to the voice sample analysis is concerned, true it is that the petitioners must be hoping to get the order of maintenance as early as possible and that is why they have resorted to a speed remedy. Even the inquiry contemplated under Section 125 of the Cr.P.C. is only a summary one. However the learned Judge seems to be aware of this fact and has specifically observed that the petitioner Nos.2 to 4 have been getting interim maintenance. If that be so, when a serious allegation has been levelled against the petitioner No.1 and the respondent is entitled to make out the defence

which he has taken under Sub Section 4 of Section 125 of the Cr.P.C. he cannot be deprived of such a right. Though it is a summary procedure and a speedy remedy provided under Section 125 of the Cr.P.C., the recourse taken by the respondent cannot be thwarted. The Writ Petition does not hold merit and is liable to be dismissed.

11. The Writ Petition is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

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vmk/-