

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 686 OF 2018**

Mrs. Liz Henrietta do Carmo Gracias Petitioner

Versus

Mr. Vikram Fernando Velho Respondent

Shri Aires Rodrigues, Advocate for the Petitioner.

CORAM : C.V. BHADANG, J.

DATE : 4th JULY 2018

ORAL ORDER:

Heard Shri Rodrigues, the learned Counsel for the petitioner.

2. The petitioner, who is the respondent in a matrimonial petition before the Trial Court, is challenging the order dated 15.05.2018, passed by the learned Trial Court, thereby directing the trial of the matrimonial petition to be conducted in camera. The petitioner made an unsuccessful attempt to get the order reviewed. The learned Trial Court has dismissed the application for review, by order dated 25.06.2018. Both these orders are subject matter of challenge in this petition.

3. Shri Rodrigues, the learned Counsel for the petitioner submitted that the impugned orders could not have been passed in absence of a written application and without hearing the parties. It is submitted that the impugned order dated 15.05.2018 is practically unreasoned. It is submitted that the learned Trial Court has tried to supply the reasons, while deciding the application for review. Strong reliance is placed on the Constitution Bench judgment of the Hon'ble Supreme Court, in the case of **Naresh Shridhar Mirajkar & Others Vs. State of Maharashtra & Another, AIR 1967 SC 1**, in order to submit that holding of trial in open Court is the rule.

4. Although, the learned Counsel for the petitioner did not dispute that the Court can, in an appropriate case, hold the trial in camera, it is submitted that in the present case, there was no reason to direct the hearing of the trial in camera. It is submitted that the impugned orders have caused prejudice to the petitioner and the same need to be set aside. The learned Counsel has also placed reliance on the decision of the Supreme Court in the case of **B.K. Muniraju Vs. State of Karnataka & Others, (2008) 4 SCC 451**, in order to submit

that the impugned orders would be amenable to interference by this Court in exercise of powers under Article 226 read with Article 227 of the Constitution of India.

5. I have carefully considered the circumstances and the submissions made and I have gone through the record and I do not find that any case for interference is made out. The petition before the Trial Court is filed by the respondent-husband for dissolution of marriage on the ground of matrimonial cruelty and adultery. Shri Rodrigues, the learned Counsel for the petitioner, in all fairness, submitted that in an appropriate case, a matrimonial petition, particularly, involving allegations about adultery etc., can be tried in camera. He also does not dispute that such a direction can be issued suo motu. The only contention is that the learned Trial Court could not have passed the order, without any written application and without hearing the parties. In my considered view, the contention cannot be accepted. Once, it is accepted that direction of such trial in camera, can be issued suo motu, there cannot be insistence on having a written application. The fact that the learned Trial Court has not mentioned that it is exercising such suo motu powers, would not make any

difference. The learned Trial Court has reproduced certain contents of the defence of the petitioner in the written statement, which read as under:

“The plaintiff at one point of time tried to lick the breasts of A and B*, to which they objected and stated that he could get the privilege only if the defendant participates. The plaintiff thereafter tried to make a move on C* but was rebuked by D* as he was sucking her breasts and getting fingered at the same time E* was also caressing the buttocks of B* at some time during play.”*

6. Having regard to the nature of the allegations, in my considered view, there was nothing wrong on the part of the Trial Court in directing the trial in camera. In the case of **Naresh Shridhar Mirajkar** (supra), there was a suit filed on the original side of this Court for libel published in Blitz on 24.09.1960. The Single Judge of this Court, on oral order, had directed that the proceedings of the suit, cannot be published. It was this order, which was subject matter of challenge before the Hon'ble Supreme Court. On fact, the Hon'ble Supreme Court confirmed the said order.

* The actual name is masked

7. There cannot be any dispute with the proposition that the ordinary rule is that the trial of all judicial proceedings should be held in the open Court. However, this rule has its own well known exceptions. One of such exceptions being a matrimonial cause. The Constitution Bench, in the case of **Naresh Shridhar Mirajkar** (supra) has *inter alia* held that that holding of the Court proceedings in the open Court are only means and not an end by itself. The essential object of any judicial proceedings is a quest for truth and to see that there is complete justice done between the parties.

8. Reliance placed on the decision of the Supreme Court in the case of **B.K. Muniraju** (supra) is equally misplaced. It is now well settled that no writ of certiorari, under Article 226 of the Constitution of India, lies against the order of Court of plenary jurisdiction, as in the present case. (see the case of **Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329**). The challenge has to be essentially considered under Article 227 of the Constitution of India. It is now well settled that the nature of the jurisdiction exercised by this Court under Article 227 is neither appellate nor revisionary in nature. It is essentially

supervisory in nature, which is aimed at ensuring that the subordinate Courts and Tribunals, operate within the bounds of their authority and the order passed does not result into any manifest injustice or miscarriage of justice. In the present case, it is not possible to accept that any manifest injustice is caused to the petitioner, on account of the trial being held in camera.

9. At this stage, Shri Rodrigues, the learned Counsel for the petitioner submits that the trial, even if held in camera, may be directed to be conducted in the Courtroom and not in Chamber. A bare perusal of the order does not show that the Trial Court had conducted or has directed the trial to be conducted in Chamber. Indeed the trial could be conducted, in camera, in the Courtroom. Subject to this, the petition is dismissed.

C. V. BHADANG, J.

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