IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2448 OF 2017

Pravinkumar Sadashiv Jagtap
and others .. Petitioners
Versus
Rupali Pravinkumar Jagtap & Anr .. Respondents

...

Mr. V.S.Talkute for the petitioners.
Mrs.P.P. Shinde, APP for the State.

CORAM: SMT. BHARATI H.DANGRE, J

DATED : 5th SEPTEMBER, 2018

P.C:-

1 The present writ petition is filed by the petitioner no.1 who is the husband of the respondent no.1 and other relatives of the petitioner under Section 482 of the Code of Criminal Procedure, praying for quashing of the order passed by the learned Judicial Magistrate First Class, Pune on 9th March 2017 below Exhibit 31.

2 Perusal of the impugned order passed below Exhibit 31 would reveal that it is passed on an application which is

taken out by the petitioner-husband to set aside “no say order” which was passed against him and seeking permission to file his say and contest the said application. Perusal of the said order would reveal that the learned Court has recorded that the main application filed by the wife is pending since 2011 and after a lapse of five years, when the matter was pending for cross-examination and since there was no response, “no say order” was passed. The learned Magistrate has recorded the chronology of events based on the roznama of proceedings and has observed that the matter has travelled upto the Hon'ble Apex Court at the instance of the husband. It is also noted that the respondent had appeared in the proceedings on 13th May 2011 and filed the present application seeking permission to file say on 13th April 2016 which is after a lapse of five years. It is also noted that the application is vague and the only reason that is offered is that certain documents were not received.

When this application is argued by the learned Advocate Shri Talkute, he would submit that no doubt there was some misconception on the part of the petitioner as they were under an impression that the proceedings have been set aside in view of the order that is passed by this Court in Criminal Application No.39 of 2013. The learned counsel very fairly submitted to this Court by an order dated 2nd December 2015 in WP No.1898 of 2013 in a petition filed by the petitioners invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. Interim

relief in terms of prayer clause (b) came to be ordered by the learned Single Judge of this Court. However, the said mistake was rectified by moving an application for Speaking to the Minutes and on 2nd May 2017, the prayer clause was amended and interim relief was converted in terms of prayer clause (d), meaning thereby that pending the disposal of the petition, proceedings before the Judicial Magistrate First Class came to be stayed.

It is no doubt true that the Chief Judicial Magistrate, Pune had refused to show any indulgence on account of the conduct of the husband and he had arrived at a conclusion that this was an attempt for delaying the proceedings, resultantly, frustrating the very object of the proceedings under the Domestic Violence Act instituted by the wife.

3 In order to grant one fair opportunity and to see to that the petitioner is not prejudiced to an extent that he is not permitted to submit his say and since this application is rejected on 9th March 2017 itself, by way of indulgence and in the interest of justice, the petitioner deserves one chance to file his say. However, this must come with a substantive cost and an opportunity be afforded to the petitioner if he pays a cost of Rs.20,000/- to the respondent wife and submit an acknowledgment of receipt of the said amount. It is only on

production of the receipt the Chief Judicial Magistrate would permit the petitioner to file his say and recall the order of "no say". The petitioner is directed to make payment within a period of two weeks and it is only on deposit of the said amount, the direction referred to above would come into effect. In such circumstances, the Writ Petition is partly allowed.

4 The impugned order, subject to the stipulations mentioned above, is quashed and set aside.

(SMT. BHARATI H. DANGRE, J.)

Manali Prasanna Tilak

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