

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 5291 OF 2018

Sheetal Mithun Patadia

...Petitioner

V/s.

Mithun Kishor Patadia & Anr.

... Respondents

Ms.Gayatri Gokhale i/b. Rizwan Merchant and Associates for the Petitioner.
Mrs.Sapna Rachure for Respondent No.1.
Mr.A.R.Patil, APP for Respondent No.2 -State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 29 NOVEMBER 2018**

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
2. This Petition is directed against the order dated 21st November, 2018 passed below exhibit 47 by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai in C.C. No. 817/PW/2008. In the said order, the learned Magistrate has given direction to return the passport of respondent No.1- husband, as he wants to go to Dubai for his work.
3. The learned counsel for the petitioner-wife submits that in the year 2008, the petitioner-wife had filed a case under Sections 498A, 406 read with 34 of the Indian Penal Code against respondent No.1- husband. Respondent No.1-

husband was absconding and ultimately, the learned Magistrate had to issue not only the bailable warrant, but also a Red Corner Notice against him. Now, respondent No.1-husband has appeared before the learned Magistrate. She further submits that till today, respondent No.1-husband has not paid an amount of Rs.30,000/- p.m. to the petitioner-wife towards maintenance and also an amount of Rs.20,000/- to his minor son towards maintenance as awarded. If the passport is returned, respondent No.1-husband will go to Dubai and will not be available for trial.

4. The learned APP confirms that respondent No.1-husband was absconded and he was arrested on 14th March, 2018.

5. The learned counsel for respondent No.1- husband submits that respondent No.1 is having a job at Dubai and he is working there for last 16 years. She further submits that he is not absconding, but he could not come to India because of working condition. If the passport is returned, he will have to get his passport renewed and as per the condition imposed in the impugned order by the learned Magistrate, he cannot leave India without permission of the trial Court. The order passed by the learned Magistrate is correct and not to be disturbed.

6. Perused impugned order. No illegality is found in the order, however, a fact remains that respondent No.1-husband was not available for 10 years for trial. The learned Magistrate has mentioned that the evidence of the complainant i.e., the petitioner-wife is going on. On query, it is confirmed by the learned counsel for respondent No.1-husband that the complainant is under cross-examination. It appears that complainant wants to examine total 5 to 8 witnesses and respondent No.1-husband does not want to lead any evidence.

7. In view of the nature of the prosecution and number of the witnesses, I am of the view that the learned Magistrate to proceed with the matter on day to day basis, as the case is 10 years old and the complainant is already under cross-examination. Hence, I pass the following order :

ORDER

- (i) Writ Petition is partly allowed;
- (ii) The order dated 21st November, 2018 passed below exhibit 47 by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai in C.C. No. 817/PW/2008 is not disturbed. However, the passport can be returned after recording of the evidence under Section 313 of the Code of Criminal Procedure;
- (iii) Parties to appear before the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai on 1st December, 2018 at 11.00 a.m. Thereafter, the learned Magistrate to proceed with the trial either

on 1st December, 2018 or on 3rd December, 2018. It is responsibility of the petitioner-wife to keep present all the witnesses on the date schedule by the learned Magistrate;

(iv) The learned Magistrate to control and curtail repetition of the witnesses;

(v) The learned Magistrate to hear and conclude the matter on or before 19th December, 2018;

(vi) Parties to co-operate.

(MRIDULA BHATKAR, J.)