

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

10 CRIMINAL WRIT PETITION NO.591 OF 2018

Devidas s/o Shamrao Pawar,
Age : 43 years, Occupation: Pensioner,
Residing at Plot No.38, Mayur Park,
Kartik Nagar, Near Maher Hospital,
Harsul Area, Aurangabad.

... PETITIONER

VERSUS

Nanda w/o Devidas Pawar,
Age : 36 years, Occupation : Well to do,
Residing presently at c/o Mr. Haridas
Vishwanath Tandle, at and post Ganori,
Taluka Phulmbri, District Aurangabad.

... RESPONDENT
(Ori. Applicant)

...

Advocate for Petitioner : Mr. Kshitij Surve
Advocate for Respondent : Mr. Deshpande Milind K

...

CORAM : MANGESH S. PATIL, J.

DATE : 23.09.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith.
Learned advocate Mr. Deshpande waives service for the respondent.
On the request of the parties, the matter is heard finally at the stage of
admission.

2 In a proceeding initiated by the respondent wife against the

petitioner husband under Section 12 of the Protection of Women from Domestic Violence Act, 2005, during hearing, when the recording of testimony is going on and after cross-examination of the petitioner husband was over he submitted application (Exh.80) and made a request that a statement in his cross-examination has inadvertently cropped up. The tenor of the cross-examination would indicate that in fact he wanted to deny the suggestion still it has appeared on page no.9 of the testimony in the first paragraph, last line which apparently reads to the effect that he has been neglecting both the children and has been staying with Sarla.

The learned Magistrate by the impugned order rejected the application. Hence this Writ petition.

3. The learned advocate for the petitioner took me through the cross-examination particularly the tenor of the replies given by the petitioner on page no.9 and submits that *ex facie* it was wrong recording of the testimony to the extent this statement has appeared in the last sentence of the first paragraph on that page. It needed to be corrected. One could easily make out this fact from the context in which the sentence has appeared and the learned Magistrate ought to have allowed the application and necessary correction should have been made.

4. The learned advocate for the respondent submits that the application was not tenable in law. There is no provision to modify the sentences in the cross-examination. It was a clear admission and proposed modification clearly seeks to withdraw that admission which cannot be allowed.

5. It is trite that recording of the deposition by the Magistrate or the Judge is live. It is not that the Magistrate is devoid of a power to make any correction at a latter point of time. However, it would all dependent upon the facts and circumstances of each case. Whether and in what context this disputed statement has appeared is a matter of clear appreciation of evidence in juxtaposition to the rest of the part of the testimony. Whether, proposed modification is directed or intended to seek withdrawal of the admission is also a matter of appreciation. The learned Magistrate was called upon to modify the sentence and he has refused to modify it by saying that there was no provision. He has not anywhere indulged in discussion of the aforementioned aspect particularly in what manner the sentence has appeared in the cross-examination, its context. He has also not considered whether it could be said that the request was directed with an ulterior motive to seek withdrawal of apparent admission. Since all these aspects involve appreciation of the entire testimony of the petitioner, the learned Magistrate would be required to address these

issues in the final judgment. Simply brushing aside the request in one line saying that he had no power was not expected.

6. In the fact situation, without indulging in further assessment of the testimony and the disputed sentence, it would be apposite to leave the parties to agitate their respective stands before the Magistrate at the final hearing of the arguments.

7. Consequently the impugned order is quashed and set aside and the Magistrate is requested to decide the issue during the final judgment by allowing both the sides to argue the issue raised by way of application (Exh.80) in light of the above observations.

8. The writ petition is allowed. The Rule is made absolute.

(MANGESH S. PATIL, J.)

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