

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

CRIMINAL WRIT PETITION NO. 1053 OF 2019

Kisan S/o Sarjerao Gavali
Age 50 years, Occ : Agri
R/o Dongaon, Tq. Gangapur
Dist.Aurangabad

.. Petitioner

Versus

Chandrakala W/o Kisan Gavali,
Age 36 years, Occu : Business,
R/o : C/o Santosh Kulkarni
Plot No.74, Shreya Nagar,Aurangabad
Dist. Aurangabad.

.. Respondent

.....

Mr.N.S.Kadarale, Advocate for the petitioner
Mr.K.H.Surve,Advocate for respondent.

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CORAM : MANGESH S. PATIL, J.
DATE : 21.09.2019

ORAL JUDGMENT :-

Heard both sides. Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

2] In a proceeding under Section 127 of the Cr.P.C. between petitioner and respondent before Family Court at Aurangabad during the course of the trial/recording of evidence, the petitioner husband submitted an application

(Exh.44) and requested the learned Judge to exhibit the VCD and photographs submitted by him alongwith a certificate under Section 65 of the Indian Evidence Act. The other side opposed the application and by impugned order the learned Judge rejected it. Hence this Writ Petition.

3] It has been submitted at the bar that subsequently the matter has reached the stage of trial arguments before the Family Court. If that is the state of affairs, in my considered view, it would not be appropriate for this Court in writ jurisdiction to decide the controversy since now all the issues pertaining to whatever material is led before the Court, its admissibility, proof, etc. can be gone into and have to be decided by the trial Court. A trial cannot be held in such piecemeal manner seeking decision of this Court touching some aspects of the matter like admissibility and proof of a piece of evidence. This is so because that could have a bearing and would deprive the trial Court of its right to consider and decide the issue. All such issues can very well be argued by the parties before trial Court during the course of final argument and the Judge would be obliged to decide them. Such issues would certainly be open even before the appellate Court.

4] Precisely for these reasons, when the matter before the Family Court has reached the stage of final arguments, I find it inappropriate to indulge in the controversy and decide the issue regarding admissibility or otherwise of the VCD and photographs produced by the petitioner.

5] Before parting, it is necessary to note that the parties were referred to the Mediator and some sort of settlement was arrived at. However, it has not been subsequently verified and endorsed by this Court.

6] The Writ Petition is disposed of as follows :

(I) The impugned order is quashed and set aside. The Family Court shall decide all the issues including the issue about admissibility and proof of the VCD and photographs by extending opportunity to both the sides to reagitate the issue during the course of final arguments.

(II) The Rule is made absolute.

[MANGE SH S. PATIL, J.]

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