

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2017 OF 2019

Ambadas Shivram Vhadgar and ors. : Petitioners.
Versus
The State of Maharashtra and anr. : Respondents.

Ms. Rekha Musale i/by Mr. R P Anarthe Patil for the Petitioners.
Mr. A R Patil, APP, for the Respondent/State.

CORAM : S. S. SHINDE, J
DATE : 07th August 2019

P.C.

1 This Writ Petition takes exception to the order dated 23/04/2018 passed by the learned Judicial Magistrate, First Class, Nandgaon. By the said order, the learned JMFC has rejected the application (Exhibit 117) filed for setting aside “No Cross” order dated 22/03/2017 vide Exhibit 93.

2 It is the case of the Petitioners that Petitioner No.1 was married to Respondent No.1 on 29/04/2004. On 27/06/2006, at the instance of Respondent No.2 a complaint was lodged with the Nandgaon Police Station, Nashik against the Petitioners. After filing the complaint, FIR came to be registered against the Petitioners bearing No.I-65 of 2006 under Sections 498A, 323, 504 of the Indian Penal Code After investigation, the police have filed charge sheet against the Petitioners bearing No.58 of 2006 on 30/10/2006.

The proceedings started before the learned JMFC Nandgaon bearing RCC No.137 of 2006. In the said proceedings Respondent No.2 filed Examination in Chief which is at Exhibit 93. On 22/03/2017 the cross examination of Respondent No.2 was started. Thereafter on 22/03/2017, when the cross examination of Respondent No.2 started, Petitioner No.1 was present but his lawyer was absent. Therefore, the trial Court passed “No Cross Order” against the Petitioners. Thereafter the Petitioners filed an application (Exhibit 117) for setting aside the said “No Cross Order”. As indicated herein above, the learned JMFC rejected the said application with liberty to secure the presence of remaining witnesses.

3 Heard the learned counsel for the parties. The learned counsel for the Petitioners submits that as Respondent No.2 has given many admissions and true facts in the examination in chief and cross examination dated 04/02/2019, so it is necessary and need to cross examine her for fair and natural justice. She further submits that Petitioner No.1 is uneducated and has no knowledge about the court proceedings. It is submitted that if the “No Cross Order” is not set aside, a grave and irreparable loss would be caused to the Petitioners. She therefore submits that the Petition deserves consideration.

4 On the other hand, the learned APP submits that Respondent No.2 has remained present in the trial Court regularly since filing of the matter

which is more than 10 years old. It is submitted that though several opportunities were granted to the Petitioners, they did not proceed with the matter. It is submitted that the trial court has rightly rejected the application filed by the Petitioners with plausible reasons. He therefore submits that the Petition deserves no consideration.

5 Heard the learned counsel for the Petitioner and the learned APP for the Respondent/State. With their able assistance perused the pleadings and grounds mentioned in the Petition, other documents and material placed on record and the reasons assigned by the trial Court for rejecting the application filed by the Petitioners.

6 The trial Court in paragraph 6 has specifically recorded that the cross examination of Respondent No.2 began on 04/01/2016 and thereafter though several opportunities were provided to the accused, they did not proceed with mater and after more than sufficient opportunities, the matter is taken up for cross examination on 08/11/2016. The learned advocate appearing for the accused in the trial court proceeded with part heard cross examination. The Trial Court has held that the conduct of the accused is not only contributes delay, but it contributes more inconvenience to the first informant i.e. Respondent No.2 herein. It is also held that more than sufficient opportunity was provided to the accused, but considering the reluctant nature

of the accused in proceeding with the matter they do not deserve leniency. The Trial Court recorded a finding that the application filed by the Petitioners accused before the Trial Court does not disclose any genuine reason which would have deprive the accused to approach the court and conduct the cross examination of Respondent No.2, and therefore, non-disclosure of genuine reason would not entitled the accused to claim leniency in the nature of interest of justice. The trial Court for the afore-stated reasons rejected the application.

7 It is required to be noted that sufficient opportunities were given to the Petitioners, but they did not proceed with the matter. The matter is of 10 to 12 years of old. Considering the conduct and nature of the Petitioners in proceeding with matter, the findings recorded by the trial Court cannot be said to be perverse. The reasons recorded for the trial Court for refusing the prayer for the Petitioner for setting aside “No Cross Order” are plausible reasons, and appears to be in consonance with the documents placed on record. It is required to be noted that for more than one year the Petitioners did not bother to cross examine Respondent No.2, and thereafter also sought an adjournment. The Trial Court has to make an endeavour to expedite the trial and take it to its logical end.

8 In that view of the matter, no case for interference in the

impugned order at the hands of this court is made out. The Writ Petition stands rejected.

[S. S. SHINDE , J]