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

CRIMINAL WRIT PETITION NO.4272 OF 2019

Anurag Vijay Goel

..Petitioner

Vs

Chhavi Anurag Goel & Anr.

..Respondents

Mr. Prashant Mendiratta i/b Mr. Swaroop Karade for Petitioner.
Mr. Ayaz Khan i/b Sayed Nabeel Ali for respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 28th November 2019.

P.C.:

1] By the present petition under Article 227 of the Constitution of India, the petitioner has impugned, Order dated 16th March 2019 passed by the Family Court, Bandra, Mumbai in Petition No.E-186 of 2018 thereby directing the petition filed by the respondent/wife for maintenance under Section 125 of Cr. P.C. be proceeded with Ex-Parte against the petitioner/husband and Order dated 19th July 2019 thereby rejecting the application filed by the petitioner under section 126(2) of Cr. P.C. for setting aside the Ex-Parte Order dated 16.3.2019.

2] Heard learned counsel for the petitioner/husband and the learned counsel for the respondent/wife. Perused the entire record produced before this Court.

3] The record indicates that, the respondent/wife has filed Petition No.E-186 of 2018 for maintenance under section 125 of Cr. P.C. in the Family Court at Bandra, Mumbai on 6.6.2018. As the respondent/husband (in the said petition), did not remain present despite service, the Trial Court by its Order dated 16th March 2019 directed to proceed with the said petition Ex-parte against the petitioner/husband as per section 125 of Cr. P.C. Petitioner/husband thereafter preferred an application under Section 126 (2) of Cr. P.C. for setting aside the Ex-parte Order dated 16.3.2019. The said application has been rejected by the Trial Court, predominantly on the ground that, the said application was filed without filing of say (written statement) in the main petition and therefore the said application is not tenable and consequently rejected the said application.

4] Learned counsel for the petitioner submitted that, he got knowledge of the said fact of passing of Order dated 16.3.2019 in the month of April 2019 and thereafter he immediately filed the said application under Section 126(2) of Cr. P.C. in the month of July 2019. He submitted that, the Advocate appearing for the petitioner is practicing at Delhi and was not aware of the procedure adopted by the Family Court and therefore did not file 'say' to the main petition in the Family Court with the Application under section 126(2) of Cr.P.C.. He fairly submitted that, it was an error/lapse on the part of the Advocate who appeared in the Trial Court. He submitted that, the petitioner may be granted an opportunity to participate in the said petition/proceedings bearing No.E-186 of 2018 filed by the respondent/wife, by setting aside the said Ex-parte Order dated

16.3.2019. He on instructions submitted that, the petitioner is ready and willing to even pay cost for the same and prayed that the impugned Orders passed by the Family Court may be set-aside by allowing the present petition.

5] Per contra, the learned counsel for the respondent/wife vehemently opposed the present petition and by pointing relevant record submitted that, as a matter of fact, the petitioner has been served with the Summons of the said Petition No.E-186 of 2018 filed before the Family Court on 13.9.2018. He relied on acknowledgment endorsed by the petitioner in that behalf. He submitted that, the petitioner has filed another case bearing No.35 of 2017 before the Metropolitan Magistrate, 15th Court at Mazgaon (Sewree), Mumbai. On 12.12.2018, the petitioner has filed reply below Exh.42 and on internal page No.9 at Clause No.(c) a reference is made about the petition No.E-186 of 2018 filed by the respondent/wife in the Family Court at Bandra, Mumbai. Apart from the said fact, the petitioner has mentioned various proceedings filed by the wife/complainant, a list whereof is mentioned on internal page No.8, para No.(i) of the said reply. He submitted that, thus while filing the said reply and affirming it before the Competent Authority, the petitioner expressed knowledge about the pendency of the present petition before the Family Court. That in the pleadings of the present petition, the petitioner has stated that, he got knowledge about passing of Order dated 16.3.2019 in April 2019 is an absolutely false statement and in view thereof, this Court may not show any leniency to the petitioner/husband and dismiss the petition summarily.

6] After perusing the record of the present matter, it appears that, the petitioner/husband was having knowledge of institution of Petition No.E-186 of 2018 filed by the respondent/wife since 13.9.2018 and despite the said fact, he chose, not to participate in the said proceedings till the impugned Orders are passed by the Trial Court. After considering various aspects of the matter, this Court is of the view that, the presence of the petitioner before the Family Court is necessary for arriving at proper conclusion by the Family Court for fixing the quantum of maintenance to be awarded in favour of the respondent/wife under section 125 of Cr. P.C. I find that, if the petitioner is not permitted to appear in the proceedings, it may give rise to multiplicity of litigation, as the Trial Court may pass Order without hearing the petitioner in this regards.

7] After taking into consideration the aforesaid fact, the Orders impugned herein, dated 16.3.2019 and 19.7.2019 are set aside and the petitioner is permitted to participate in the proceedings, i.e. in Petition No.E-186 of 2018, before the Family Court, subject to payment of cost of Rs.50,000/- to be paid to the respondent/wife. The petitioner shall also attend each and every date before the Trial Court either personally or through his Advocate without any excuse. Petitioner shall pay the said cost of Rs.50,000/- to the respondent within a period of three weeks from today by way of demand draft without seeking further extension of time in that regard.

8] Writ Petition is allowed in the aforesaid terms.

(A.S.GADKARI, J.)