

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.227 OF 2020

Ratan s/o Dattarao Jadhav

... Petitioner

Versus

1. Sagarbai w/o Ratan Jadhav
2. Shubhangi Ratan Jadhav
3. The State of Maharashtra

... Respondents

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Mr. Hemant Surve and Mr. K. H. Surve, Advocate for petitioner.

Mr. K. B. Jadhav, Advocate for Respondent No.1

Mr. A. M. Phule, APP for respondent No.3 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23-11-2020

ORDER :

. Present petition has been filed by the original non applicant-husband invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order passed by learned Judicial Magistrate First Class, Kinwat in Miscellaneous Criminal Application No.40 of 2018 on 22-10-2019, whereby the application for amendment of application filed by present respondent Nos.1 under Section 125 of the Code of Criminal Procedure came to be allowed.

2. Heard learned Advocate Mr. Hemant Surve and Mr. K. H. Surve for petitioner, learned Advocate Mr. K. B. Jadhav for respondent No.1 and learned APP Mr. A. M. Phule for respondent No.3 - State.

3. It has been vehemently submitted on behalf of the present petitioner – original non-applicant that the facts about the marriage, paternity of present respondent No.2, service of the present petitioner and co-habitation of present respondent No.1 - original applicant No.1 and present petitioner is not disputed. Original applicant No.1 and non-applicant got married on 09-05-2002. They were happily married, however, all of a sudden, due to the instigation by relatives, the wife had gone to her father's place and refused to cohabit. She has unnecessarily dragged the husband and his relatives in a proceedings under Section 498-A of the Indian Penal Code. Further, proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 has also been initiated apart from the application for maintenance under Section 125 of the Code of Criminal Procedure. Perusal of her application for maintenance i.e. Miscellaneous Criminal Application No.40 of 2018 would show that she had not pleaded refusal or negligence, which is the prime ingredient for entertaining the application for maintenance. When it was pointed out and objection was taken regarding the maintainability, the application has been filed for amending the original application itself. As regards the said application Exhibit-D wherein it is stated that there are some typographical mistakes, the present petitioner – non

applicant has no objection, however, as regards deletion of certain words and replacing it by statement that the husband has refused and neglected to maintain the applicants, he has every objection. It will definitely change the nature of the proceedings and it amounts to filling up the lacuna in absence of the same. Definitely, the application would have been rejected for not pleading the basic requirement about refusal and neglect to maintain. The learned Magistrate, however, allowed the said application routinely, without considering the consequences and, therefore, that order deserves to be set aside.

4. Per contra, learned Advocate appearing for respondent Nos.1 and 2 strongly opposed the petition and apart from the reasons those have been given by the learned Magistrate for allowing the application, it has been submitted that the basic pleadings have been already pleaded, but only to have a clarity, the amendment is sought.

5. At the outset, it is to be noted from the contents of the criminal application that the wife has given as to what treatment was given to her. She contends that she was harassed by the husband and his relatives on the ground that dowry was not given and on that count, she was abused, insulted, assaulted and mentally harassed. It is her contention that after the husband was transferred to Aurangabad in the year 2017, when she came to stay with him, the husband started saying that she should bring amount to purchase motor car

and on that count, according to her, she was harassed. She has lodged report for the offence punishable under Section 498-A of the Indian Penal Code. She submits that since May 2018, she and her daughter are residing with her parents. Though her father has made efforts for her resumption of cohabitation with husband, husband is not ready and then she says that she has no source of income. She quotes the income of the husband and then prays for maintenance. Thus, it can be seen that she had tried to say that she has been refused and neglected. It is in respect of sense, when she says “परंतु गैरअर्जदार हा तिला नांदवुन घेण्यास तयार नाही”. It would be appropriate to rely on the decision in ***Des Raj and others Vs. Bhagat Ram (Deceased) by LR's and others, (AIR 2007 SC (Supp.) 512)***, wherein it has been held that “The Muffosil pleadings must be construed liberally. Failure in not using accurate words in the plaint or some mistakes committed in formulating some sentences, more particularly, in regard to the approval of cause of action for filing the suit by the appellant/plaintiff *ipso facto* would not mean and should not have been interpreted by the Courts below to mean that there was no cause of action for filing the suit by the appellant/plaintiff.” Though these observations are in connection with civil litigation, yet, it can be seen that the proceedings under Section 125 of the Code of Criminal Procedure are *quasi-civil* in nature and, therefore, those rules of pleadings would then be applicable to such proceedings. The gist is required to be considered here that the pleadings in the muffosil area are required to be

liberally construed and absence of use of specific words giving rise to the proceedings will not give advantage to the other side when the pleadings as a whole communicate the same ingredients.

6. No case is made out to invoke the constitutional powers of this Court for interference and, therefore, writ petition deserves to be rejected. Accordingly, it is rejected.

[SMT. VIBHA KANKANWADI, J.]

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