

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

WRIT PETITION NO. 661 OF 2020

Pooja Kaur W/o Mandeepsingh Chhatwal ... Petitioner

Versus

Mandeepsingh S/o Kulbirsingh Chhatwal ... Respondent

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Mr. N. T. Tribhuwan, Advocate for petitioner

Mr. R. R. Dhanukar, Advocate for respondent

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CORAM : R. G. AVACHAT, J.

DATED : 19th JANUARY, 2021

PER COURT :-

. The challenge in this writ petition is to the orders below Exh.1, Exh.138 and Exh.139 passed by the Family Court, Aurangabad in Petition No.A.297 of 2017. By the impugned order dated 19.09.2019 passed below Exh.138 and Exh.139, the applications moved by the petitioner-wife for issuance of witness summons and bailable warrant to the witnesses who did not remain present in spite of service of summons, came to be rejected. Vide order below Exh.1, the witnesses who had appeared in response to the summons issued vide order below Exh.66, came to be

discharged, since the petitioner-wife and her advocate were not present before the Court to examine those witnesses. In short, by the impugned orders, the petitioner-wife has been denied an opportunity to lead evidence in support of her claim for maintenance.

2. The respondent-husband filed the petition for dissolution of marriage by decree of divorce against his wife (petitioner herein). The couple is blessed with two children. Both the children are in custody of the petitioner-wife. The respondent-husband has also preferred proceedings for custody of those children, whereas the petitioner-wife has moved application for grant of maintenance. In support of her contentions, the petitioner has contended that the respondent has put up hoardings on certain buildings and is getting certain income therefrom. The petitioner-wife wanted to examine the owners of such buildings to prove agreements between respondent-husband and those building owners. In short, the petitioner wanted to bring on record the respondent to have income from advertisement business. The Family Court had allowed the application moved by the petitioner-wife for issuance of witness summons to certain witnesses. It appears that some of the witnesses

appeared in response to the summons. However, on the given day, neither the petitioner-wife nor her advocate were present before the Family Court to examine those witnesses. The witnesses were not cross examined. The explanation given by the petitioner-wife is that those witnesses were asked to produce agreements entered into between the respondent-husband and building owners regarding putting up of the hoardings. Since the witnesses did not come with these documents, they have not been examined.

3. Learned advocate for the respondent submitted that no such agreements have ever been executed. There is therefore no question of its production before the Court. According to the learned advocate, the respondent-husband has filed affidavit as regards particulars of his assets and liabilities and source of income, as well. According to the learned advocate, such affidavit is now required to be produced in maintenance proceedings by virtue of order passed by the Hon'ble Supreme Court in Criminal Appeal No. 730 of 2020 (*Rajnish vs. Neha & Anr.*). Learned advocate meant to say that beyond what has been stated in the affidavit, the respondent-husband has no other income. It is, therefore, not necessary to issue witness summons as has been prayed for.

4. The petitioner is the wife of respondent. The couple is blessed with two children. The children are in custody of petitioner-wife. She has moved application against the respondent-husband for grant of maintenance. It is her specific case that the respondent-husband has put up hoardings on certain buildings. Agreements in this regard must have been executed between the respondent and the building owners. With a view to bring on record the respondent's income from advertising business, the petitioner-wife had moved applications for issuance of witness summons for production of such agreements and to examine them in proof thereof. The Family Court had allowed those applications. The respondent-husband had challenged the order granting those applications. The respondent-husband has however been unsuccessful. On the given date, the witnesses had appeared before the Court. The petitioner and her advocate were not present. The Family Court, therefore, discharged those witnesses. On the next date, 2/3 witnesses had appeared before the Court. They had not brought so called agreements. Those witnesses, therefore, were not examined.

5. In my view, the petitioner-wife is claiming maintenance from her husband. The Family Court, in such proceedings must have been liberal in allowing the wife to lead evidence in proof of her claim as regards income of the respondent-husband.

6. True, the Apex Court in the case of *Rajnesh (supra)* has issued directions. One of those directions is as regards filing of affidavit regarding assets and liabilities at the beginning of the proceedings for grant of maintenance. By filing such an affidavit, it is not that wife is precluded from leading evidence as regards income of her husband. Since the application for issuance of witness summons had already been granted by the Family Court, however the witnesses came to be discharged on account of absence of the petitioner-wife and her advocate with a view to give the petitioner-wife an opportunity to lead evidence and in the interest of justice, the orders impugned in this writ petition, need to be set aside.

7. In the result, the writ petition is allowed.

The order passed below Exh.1, in Petition No.A.297 of 2017 is hereby set aside. Applications Exh.138 and Exh.139 are allowed. The Family Court to issue witness summons as has been

urged in Application Exh.139. As regards application Exh.138 is concerned, the Family Court shall issue witness summons and then if found necessary, may take coercive steps for securing presence of the witnesses cited in Application Exh.138.

[R. G. AVACHAT, J.]

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