

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

31 CRIMINAL WRIT PETITION NO.995 OF 2021

**ANANTA GIRJAPPA MULGIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Atmaram J. Patil h/f Mr.Kuptekar
Sachin V.

APP for Respondent No. 1-State : Ms. R.P.Gaur
Advocate for Respondent Nos. 2 to 4 : Mr.Tripathi Manish P.

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**CORAM : N.R. BORKAR , J.
DATE : 15th NOVEMBER, 2021.**

P. C. :

1. This petition takes an exception to the order dated 02.03.2021 passed by the Judicial Magistrate First Class, Gangakhed below Exh. 21 in Criminal Miscellaneous Application No. 233 of 2019 to the extent of imposition of costs of Rs. 700/-.

2. Respondent Nos. 2 to 4 herein filed an application under Section 125 of the Code of Criminal Procedure (for short "Cr.P.C.") for maintenance against the present petitioner. The notice of said application was issued to the petitioner. The service report was submitted before the trial Court and due to non appearance of the petitioner before the trial Court even after service of notice, an order that 'matter to proceed ex-parte against the petitioner' was passed.

3. According to the petitioner, a notice of the application for maintenance was never served upon him and the concerned Constable submitted a false service report before the learned Trial Court. According to the petitioner he came to know about the filing of the application for maintenance, only when the witness summons was served upon the Head Master of the School, where he is working as a teacher. Thus the application was filed to set aside the order i.e. to proceed the matter 'ex-parte against the petitioner' and the permission was sought to file the reply to the application for maintenance. The trial Court allowed the said application subject to costs of Rs. 700/-. The petitioner being aggrieved by the imposition of the costs has filed this petition.

4. Learned counsel for the petitioner submits that specific averments were made in the application that the petitioner was never served with notice of the application filed by the respondent for maintenance and the concerned constable submitted false report to the trial Court. It is submitted that in such circumstances, the trial Court was not justified in imposing the costs. It is submitted that the Trial Court without there being any material contrary to the contention of the petitioner has observed that the petitioner was negligent. It is submitted that the order of the costs thus needs to be set aside.

5. On the other hand, the learned counsel for the contesting respondent submits that the notice of maintenance application was served upon the petitioner and no contrary evidence was produced. It is submitted that still the learned trial Court in the interest of justice, has allowed the application. It is submitted that present petition is filed just to prolong the hearing of maintenance application and therefore it be dismissed.

6. I have perused the order impugned.

7. According to the petitioner the concerned police constable submitted false report and he was never served with the notice of application for maintenance. The trial Court without going into the said controversy allowed the application filed by the petitioner, subject to costs of Rs. 700/- and even permitted the petitioner to file the reply to the application filed by the respondent for maintenance. Considering the disputed question of facts, I am not inclined to entertain the present writ petition. In the result following order is passed :

ORDER

a. Writ Petition is dismissed.

(N.R. BORKAR)
JUDGE