

RAJESH
VASANT
CHITTEWAN

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CHITTEWAN
Date: 2021.11.27
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WITH

INTERIM APPLICATION NO.1754 OF 2019

... Petitioner

Versus

... Respondents

And Others

Mr. Shantanu Phanse a/w Mr. Nikhil Adkine, Vridhi Maria and Nilesh Navale i/b Chinmay Acharya for the Petitioner.

Ms. Sangeeta Shinde, APP for the State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 24 NOVEMBER, 2021

P. C. :

Heard Mr. Shantanu Phanse, learned Counsel appearing for the Petitioner and Ms. Sangeeta Shinde, learned APP appearing for Respondent No.1-State.

2 On perusal of the materials placed before this court, some peculiar circumstances are noticed that Respondent No.2 had approached Manikpur Police Station, District Thane, with a grievance of mental and physical harassment at the hands of the Petitioner, who happens to be the husband of Respondent no.2 as

well as her other matrimonial relations, namely, Pramod Amarnath Bhandari, father-in-law and Smt. Harsha Pramod Bhandari, mother-in-law. Perusal of the report lodged at police station dated 13 October 2010, shows that the Petitioner and Respondent No.2 were having a good academic backdrop and accordingly, they proceeded in their respective careers, i.e. Respondent No.2 was an employee of one L & T Company, whereas, the Petitioner was working in same company in USA.

3 Subsequent to their marriage solemnized on 22 January 2010, which was registered on 25 January 2010, the couple proceeded to USA on 30 January 2010. It seems that within a short period of matrimonial life, i.e. not even for a month, a couple faced with matrimonial discords. Be that as it may. It seems that apart from an FIR, simultaneously certain other proceedings were initiated at the instance of Respondent No.2. Perusal of the prayer clauses shows that based on filing of the FIR, the investigating agency completed its exercise of investigation and same resulted into filing a charge-sheet against the accused persons in the competent court.

4 Being aggrieved, the Petitioner then approached this court by filing the present petition on 25 April 2016 with prayer for quashing of FIR lodged at the instance of Respondent No.2. Pursuant to the FIR and vide prayer clause -(b), an interim prayer is sought for in the nature of suspension and stay to the execution of the operation of the lookout notice and non-bailable warrants issued by the trial court.

5 The perusal of the order sheet shows that the petition was listed before this court on 6 September 2017. The notice was issued to the Respondents and by way of an interim direction, a Division Bench of this court was pleased to direct the court below not to frame charge against the Petitioner until further orders.

6 Though the petition appeared before this court subsequently on various dates, Respondent No.2 was neither represented by any Counsel nor caused her appearance. By way of Interim Application No.1018 of 2020, the Petitioner sought for permission of substituted service on account of non-availability of Respondent No.2, though a paper publication. Vide order dated 3 July 2021, the Division Bench of this court on the backdrop of the report that Respondent No.2 is not available, and further statement in the report that Respondent No.2 sold her house prior to two years and her whereabouts are not known to the persons in the vicinity, allowed the interim application in terms of prayer clause-(a).

7 The Applicant/Petitioner was, thus, permitted to publish notice of the petition in one National newspaper and one local newspaper. Learned Counsel appearing for the Petitioner submitted that even this exercise could not bring any fruits and till the date, whereabouts of Respondent No.2 are not known and Respondent No.2's search also resulted in futile. The situation, thus, emerges from the above referred facts is in view of the interim order passed by this court, the trial court is unable to proceed in the matter. The whereabouts of Respondent No.2 are not known inspite of due search and paper

publication, Respondent No.2 is not available.

8 Considering these peculiar facts, we are of the opinion that in the fitness of the things, interest of justice can be served by disposing of the present petition, permitting further the writ petition by vacating the interim order and consequently, permitting the learned trial court to proceed with the trial and conclude the same as early as possible and not later than six months from the date of receipt of this order. The Petitioner is at liberty to approach the trial court for his presence on condition as such, filing of an application for exemption etc. Needless to state that, if such applications are filed, the trial court to consider those applications on its own merits, in view of the fact that this court has not expressed any opinion about the merits of the matter.

9 Mr. Phanse, learned Counsel appearing for the Petitioner, on instructions, submits that the Petitioner is more than willing to visit India in view of his renewal of passport and is ready to co-operate with the trial court. The submission of learned Counsel is that this willingness of the Petitioner is a *bona fide* act and continuation of the lookout notice, would be a hurdle for the Petitioner to avail other remedies before the trial court or in the exercise of renewal of passport. There is some merit in the submissions of Mr. Phanse, learned Counsel appearing for the Petitioner. In view of the statement of the Petitioner showing his willingness, is accepted as an undertaking before this court. In view of this fact, we see no propriety in continuation of the lookout notice issued against the

Petitioner is dropped. The Writ Petition is, accordingly, disposed of.

10. In view of the disposal of the petition, Interim Notice No.1754 of 2019, does not survive and is disposed of.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)