

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.171 OF 2021

Tanvi w/o Ankush Bambal,
 Aged about 28 years,
 Occ: Household and Education,
 R/o C/o Kishor Kadu, Behind Atul
 Mangal Karyalaya, Rukhmini Nagar,
 Amravati, Tq. & Dist. Amravati. **PETITIONER**

...VERSUS...

1. Ankush s/o Nilkanthrao Bambal,
 Aged about 29 years, Occ: Service,
 R/o Behind Atul Mangal Karayalaya,
 Rukhmini Nagar, Amravati,
 Tq. & Dist. Amravati.
2. Sau. Sarika Nilkanthrao Bambal,
 Aged about 59 years,
 Occ: Household.
3. Nilkanthrao Janraoji Bambal,
 Aged about 64 years,
 Occ: Retired.

No.2 & 3 are R/o House No.513,
 Behind Atul Mangal Karayalaya,
 Rukhmini Nagar, Amravati,
 Tq. & Dist. Amravati.

4. Sau. Dhanshri Digvijay Shinde,
 Aged about 31 years, Occ: Doctor,
 R/o Shinde Hospital and Maternity Home,
 Sambhaji Nagar, Jalna,
 Tq. & Dist. Jalna. **RESPONDENTS**

 Ms. Astha Sharma, Advocate h/f Mr. PR. Agrawal, Advocate
 for Petitioner.

Mr. Vijay A. Kothale, Advocate for Respondents.

CORAM: ROHIT B. DEO, J.
DATE: 24th JUNE, 2021.

ORAL JUDGMENT:

Heard.

2. Rule.

3. With consent, the petition is finally heard.

4. This petition involves an extremely limited issue. Mrs. "T" instituted proceedings under the Protection of Women from Domestic Violence Act, 2005 (DV Act) against her husband and other members of the matrimonial family, who responded by denying her allegations and accusing her of misconduct.

5. Be that as it may, the trial commenced, Mrs. "T" entered the witness box and filed an affidavit in lieu of oral examination-in-chief. Her further examination-in-chief was recorded on 14.01.2021 and she was cross-examined. However, due to paucity of time, the cross-examination could not be completed on 14.01.2021 and the matter was adjourned for further cross-examination to 19.01.2021.

6. It is not in dispute, that on 14.01.2021 the deposition recorded was not even corrected by the learned Judge, much less read over to Mrs. 'T'.

7. It is further undisputed that it was only on 19.01.2021 that copy of the deposition recorded on 14.01.2021 was made available to Mrs. 'T'.

8. Mrs. 'T' contends that there are certain factual errors in recording her deposition. She moved an application Exh.123 seeking correction in the deposition, which is rejected by the learned Magistrate vide order dated 22.01.2021, which is impugned herein.

9. The learned Magistrate concludes the order observing thus:

4. Considering all the proceeding and recollecting the deposition of witness I am of the opinion that, it is a open proceeding and it was recorded in the presence of both the parties and their advocate and no objection was taken on 14.01.2021. Hence, this application can not be allowed. Considering the reason I proceed to pass following order.

ORDER

1] Application is hereby rejected.

2] Parties to take note of it.

10. In my considered view, the Magistrate committed a serious error in not appreciating that the deposition was not read over to Mrs. 'T' on 14.01.2021, that copy of the deposition was made available only on 19.01.2021 and at the first available opportunity Mrs. 'T' did contend that her deposition contains factual error.

11. The proceedings under Section 28 of the DV Act mandate that save as otherwise provided, all proceedings under Section 12 shall be governed by the provisions of the Code of Criminal Procedure, 1973. Section 28 of the DV Act reads thus:

28. Procedure.—(1) *Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).*

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

12. It would be necessary to note the provisions of Section 278 of the Code of Criminal Procedure, 1973 which reads thus:

278. Procedure in regard to such evidence when completed.—(1)*As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.*

(2) *If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.*

(3) *If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.*

13. The statutory scheme is that if the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

14. While the learned Magistrate has indeed made certain observations, the exercise is done while rejecting application Exh.123. The objection of Mrs. 'T' is not incorporated in the evidence. Moreover, the reasons recorded by the learned Magistrate to brush aside the objection, are not entirely satisfactory. The Magistrate was apparently influenced by the fact that the deposition was recorded in the presence of the parties and their respective counsel, and no objection was taken on 14.01.2021. The Magistrate clearly failed to appreciate, that the right to object continues to be available to the witness, after the deposition is read over. To be precise, it was when the deposition was read over to Mrs. 'T' on 19.01.2021, that the right to object accrues, and was immediately availed. It further appears that the learned Magistrate relies on the recollection to reject the objection. He clearly erred. The learned Magistrate rejected the objection on 22.01.2021 after seven days from recording of the deposition. The learned Magistrate is clearly on unsure ground in brushing aside the objection relying on his memory of what transpired in, what obviously was, one of the many proceedings conducted in his Court, and that too seven days ago. It would have been a different matter if the Magistrate was deciding the objection immediately after recording the deposition, in which

case he may have been justified in relying on his memory of what was the precise answer given.

15. Mr. Kothale, the learned counsel for the respondents points out that the respondents have placed on record their reply to the objection and have denied that there was any error in recording of deposition.

16. It would not be necessary to make any definite observation on the merits of the rival contentions.

17. In view of the statutory scheme, the trial court shall incorporate the objection in the evidence. While appreciating the evidence, at the stage of final hearing, the learned Magistrate may come to a conclusion, either way, on the rival contentions.

18. Needless to record, that every contention touching the merits, is kept expressly open. While Mrs. "T" is at liberty to demonstrate, in the context of the entirety of evidence that her answers were accurately recorded, it would be equally open to the respondents to demonstrate otherwise.

19. In view of the directions supra, the order impugned is quashed.

20. In view of the directions issued by this Court, no order shall be necessary on Exh.123, at this stage.

21. The petition is disposed of in the aforestated terms.

JUDGE

NSN