

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

WRIT PETITION NO.4217 OF 2020

**VIVEK RATNAKAR MATE
VERSUS
ASHA VIVEK MATE**

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Advocate for Petitioner : Mr. Gholap Ajit M.
Advocate for Respondent: Miss. Karishma S. Sarin

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 5th May, 2022

ORDER :

1. This petition filed under Article 227 of the Constitution of India takes exception to the order dated 30/11/2019, passed by the learned District Judge-3, Bhusawal, below Exhibit-13 in Regular Civil Appeal No.74/2015, thereby rejecting the application filed by the petitioner seeking amendment in the plaint and addition of paramour.
2. The petitioner/husband filed Hindu Marriage Petition (HMP) No.602/2012 for dissolution of marriage under Section 131 (1), (ia) of the Hindu Marriage Act, 1955 (for short "the said Act") mainly on the ground that the respondent is living in adultery and the ground of mental cruelty at the instance of respondent was also claimed.

3. After recording evidence, the Trial Court rejected the said petition filed by the petitioner/husband. The respondent challenged the order of the Trial Court by filing Regular Civil Appeal No.74/2015.

4. During the pendency of the appeal, the petitioner moved an application (Exhibit-13) for amendment under Order VI Rule 17 of the Civil Procedure Code (for short “CPC”) claiming that in Hindu Marriage Petition, allegations of adultery were made and that was one of the ground pressed in service seeking divorce. At that time, the paramour of the respondent was not made party to the divorce petition. The aspect of adultery was not considered by the Trial Court as the paramour was not made party in the petition. By relying on the decision in **Varun Pahwa Vs. Mrs. Renu Chaudhary (Civil Appeal No.2431/2019 decided on 01/03/2019)**, the petitioner sought amendment for addition of paramour as the respondent no.2. The petitioner further prayed that criminal case initiated at the instance of respondent under Section 498-A of the Indian Penal Code (for short “IPC”) is decided and the petitioner and others are acquitted in the said matter. The petitioner therefore claimed that the said ground be permitted to be added in the petition since the petitioner is acquitted

in the proceeding under Section 498-A of IPC lodged at the instance of the respondent/wife amounts to cruelty and the petitioner is entitled for divorce on that ground also.

5. The Appellate Court has rejected the said application on the ground that since the name of the paramour is not mentioned in the title of the suit, it is a clear omission on the part of the petitioner and the petitioner cannot be permitted to rectify the lacuna in his case after going through the observations of the Trial Court in the impugned judgment. The Appellate Court also rejected the amendment in respect of the acquittal of the petitioner of 498-A case on the ground that the petitioner has already filed suit for compensation after his acquittal in the criminal case and therefore, that fact cannot be brought on record by way of amendment. Hence, the present petition impugned this order.

6. Heard the learned Advocate for the petitioner. The respondent though served, failed to appear. Hence, the learned Advocate Miss. Karishma S. Sarin was appointed to represent her in the matter.

7. Having heard the rival submissions of the parties and after perusing the documents placed on record, it is clear that the

petitioner has failed to add the paramour of respondent as party respondent in the Hindu Marriage Petition filed by him for divorce. The decision in the Hindu Marriage Petition is rendered on 02/09/2015 and thereafter, the petitioner has challenged the said decision in the appeal. The petitioner and others were acquitted in 498-A case on 09/05/2018. Thus, this is a subsequent development and the petitioner is entitled to bring the same on record so as to claim divorce on the ground of acquittal in 498-A case.

8. Though the petitioner has failed to add the paramour as respondent in the Hindu Marriage Petition, taking into consideration the fact that appeal is a continuation of suit and the petitioner is required to be given fair opportunity to contest his case on merits and even additional evidence can be recorded in the appeal. The prayer of the petitioner deserves to be allowed in the peculiar facts of the present case.

9. Though the learned Advocate for respondent strenuously opposed the petition by submitting that the petitioner is trying to fill-up the lacuna by adding the paramour as a party in the proceeding and though the petitioner was acquitted in 2018, the application was belatedly filed.

10. For the aforestated reasons, this Court is not inclined to accept the said arguments.

11. In the result, writ petition is allowed. The impugned order dated 30/11/2019, passed by the District Judge-3, Bhusawal below Exhibit-13 in Regular Civil Appeal No.74/2015 is quashed and set aside. The application (Exhibit-13) is allowed subject to the costs of Rs.10,000/- to be deposited by the petitioner in the Trial Court, which shall be paid to the respondent.

12. The fees of learned Advocate appointed for respondent is quantified at Rs.2500/-, which shall be remitted to her within a period of six weeks from today.

[NITIN B. SURYAWANSHI, J.]

Sameer