

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

CRIMINAL WRIT PETITION NO. 1471 OF 2021

Kaushalya Sitaram Rathod

..PETITIONER

VERSUS

Mangesh Shrichand Rathod

..RESPONDENT

....
Mr. B.V. Thombre, Advocate for petitioner

Mr. R.B. Ade, Advocate for respondent
....

CORAM : R.G. AVACHAT, J.

DATED : 31st JANUARY, 2022

PER COURT :

1. The challenge in this petition is to order dated 30th October, 2021 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 155 of 2021.

2. The petitioner herein is the original complainant in Summary Criminal Case No. 5321 of 2016. It is an offence punishable under Section 504 and 506 of the Indian Penal Code. The case dates back to 2016. The recording of evidence of the complainant was over. She had moved an application Exhibit 26 permitting her to lead further evidence. It appears that on 12th March, 2020, the learned J.M.F.C, Aurangabad had closed the evidence for the petitioner - complainant. The petitioner had submitted that as the Standing Operating Procedure of the High Court was in force on

account of lock down due to Covid, she could not take appropriate steps in the case. The said application was allowed vide order dated 03rd March, 2021 imposing cost of Rs.1,000/-. Thereafter, the petitioner moved an application Exhibit 27 seeking extension of time since her husband was not keeping well. Medical certificates were also placed on record. Learned Magistrate rejected the said application on the ground that the petitioner did not comply with the order of depositing cost of Rs.1,000/-. Learned Magistrate went ahead to close the evidence for the petitioner-complainant and fixed the case for examination of the respondent–accused under Section 313 of Code of Criminal Procedure (‘Cr.P.C.’). The petitioner-complainant, therefore, moved application Exhibit 29 for setting aside the said order. Learned Magistrate rejected the said application with following observations :-

“Read application and say of accused. In fact the matter is fixed on today’s board for statement of accused under Section 313 of the Cr.P.C. Accused is present. Prior to this, sufficient and proper opportunity has been given to the complainant. Specific and detailed order has been passed below Exhibit 26, 27 and Exhibit 1 on 11.8.2021. I do not find any kind of substance in the application. Complainant is interested to keep the case pending for long time.”

3. The record indicates that the petitioner-complainant could not deposit a sum of Rs.1,000/- as cost. She was, therefore, denied the opportunity to lead the evidence (examine the witness). The matter was fixed for statement of the respondent–accused under Section 313 of the Cr.P.C.

4. Learned counsel for the respondent – accused would submit that the case is very old. The respondent is taking education. The petitioner is interested in delaying the hearing of the case. According to him, the petition deserves to be dismissed.

5. The factual matrix has already been referred to hereinabove. Only with a view to give the petitioner – complainant an opportunity of hearing, in the facts and circumstances of the case, the petition is allowed in terms of following order :-

ORDER

(i) Writ petition is allowed in terms of prayer clause [B] subject to cost of Rs.1,000/-, in addition to the cost she has been directed to deposit vide order dated 03rd March, 2021 passed below Exhibit 26 in the case.

(ii) The trial Court shall permit the petitioner herein to examine her witness.

(iii) The trial Court is directed to decide the case as expeditiously as possible and preferably within four weeks from the date of receipt of copy of this order.

(R.G. AVACHAT, J.)

SSD