

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

CRIMINAL WRIT PETITION NO.1476 OF 2021

Arafath Ahmed s/o. Abrar Ahmed ..Petitioner

Vs.

Nadiya w/o. Arafath Ahmed ..Respondents

Mr.Sk. Sohail Subhedar, Advocate for petitioner

**CORAM : R.G. AVACHAT, J.
DATE : JANUARY 04, 2022**

ORDER :-

Heard.

2. The challenge in this petition is to the order dated 23.09.2021 passed below application (Exh.62). This is a proceedings between husband and wife under PWDVA Act. Vide application (Exh.62), the petitioner - husband has sought for recall of his wife as a witness to subject her to further cross-examination. Permission to produce certain documents was also urged for under the very application. The Trial Court allowed the application granting permission for production of documents but refused to recall the witness (wife) for further cross-examination.

3. Perused the order impugned herein. The entire blame is sought to be placed on the Advocate representing the petitioner, before the trial Court. Recall of witness was sought on the ground for confronting her to the documents, production of which has been permitted. The documents are in the nature of photographs, hospital bills, etc.

4. In view of this Court, instead of confronting the witness with those documents, same can very well be proved by the petitioner herein, by examining concerned witnesses. Record indicates that his evidence has just commenced. The trial Court has observed thus:-

04. Perused the application and say filed on it and record. Heard learned advocate for both sides. From the perusal of application, it appears that it is filed u.Sec.311 of Cr.P.C. for recalling applicant for her cross examination by respondent. The stage of present application is evidence of respondent. The record also shows that cross of applicant was conducted by respondent through his advocate. The allegations leveled against advocate of respondent are not relevant and to be considered at this stage. For the purpose of recalling witness as prayed by respondent must be necessary for just decision of case. In the present case already the cross of applicant was conducted and the matter was posted for evidence of respondent. The reason for conducting further cross of applicant is mis-behaviour of earlier advocate. It is well settled that party has choice to conduct his case through advocate of his choice. Therefore, on this

ground respondent cannot seek permission to further cross applicant. Moreover the evidence of respondent is going on and he can put his case through his evidence. He is not remedyless for the purpose putting or proving his case by independent evidence. The documents sought to be produced are photograph and other document in respect of applicant. Therefore, there seems no requirement to call applicant as prayed by respondent. The prayer of respondent is not necessary for just decision of case so the present application is liable to be partly rejected.....”

5. It is informed that the matter has been posted for arguments. The order under challenge herein is only of refusal to recall the witness namely, wife of the petitioner. The trial Court has observed that the petitioner herein can very well prove those documents independently. It appears that said opportunity has not been availed.

6. In the factual backdrop, no interference with the impugned order is called for. The petition, therefore, stands dismissed with liberty to the petitioner to move the trial Court for permission to lead additional evidence in proof of the documents, production of which has been allowed under the impugned order.

[R.G. AVACHAT, J.]

KBP