

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1307 OF 2021

Sunita Sanjay Kalwar ...Petitioner
Versus
The State Of Maharashtra And Anr. ...Respondents

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Ms. Sunita S. Kalwar, Petitioner in person, present.

Mr. Samyak K. Gimekar, Advocate for Respondent No.2.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 23rd SEPTEMBER, 2022.

PER COURT:

1. The petitioner has initiated the proceedings under the Protection of Women from Domestic Violence Act (hereinafter referred to as 'DV Act') against respondent No.2 which are pending before the Court of the learned Additional Chief Metropolitan Magistrate, at Ballard Pier, Mumbai and numbered as 1737/SS/2013. The evidence of the petitioner/complainant was adduced. She was cross examined by the respondent. Thereafter, both the sides filed pursis for closing of evidence. Pursuant to that, application was preferred by Respondent No.2 for placing on record documents which application has been allowed by the learned Magistrate vide order dated 14.11.2019. The petitioner

has challenged that order before the Court of Sessions and the appeal preferred by the petitioner was dismissed by the Sessions Court vide order dated 22.01.2021.

2. The petitioner, who appeared in person submits that the order passed by the Courts below are contrary to law and deserves to be set aside. The evidence of the petitioner was adduced and thereafter the petitioner had been cross examined. Pursis were filed by the petitioner as well as respondent No.2 for closing evidence. The Respondent No.2 filed pursis of closing evidence on 12.02.2019. The application for taking the documents on record was preferred on 19.07.2019. The application was vague. It was not explained as to why the documents are required to be taken on record. The learned Magistrate without assigning any legal reasons, allowed the application by imposing cost of Rs.1,000/- upon the respondent. After closure of evidence there was no reason for the Court to take compilation of documents produced by the Respondent No.2 on record. The learned Sessions Judge has confirmed the order of learned Magistrate without assigning any cogent reasons. The order indicating that the learned Magistrate has passed the order considering the aspects of the matter by imposing cost. The respondent is not trying to delay the matter. It is submitted that after closing evidence, the case was listed for

arguments, which is evident from the rojnama of the Court. However at that stage the impugned application was preferred by the Respondent No.2 which has been erroneously allowed by the Courts below. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of M/s. Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai V/s. M/s. Gupta Building Material Store delivered in SLP(C) No.35268 of 2011, another decision of the Hon'ble Supreme Court in the case of K.K. Velusamy V/s. N. Palanisamy delivered in Civil Appeal Nos.2795-2796 of 2011 and decision of this Court in Criminal Application No.19/2014 in the case of Dr. Kishor S/o Uttamrao Hantodkar V/s Appropriate Authority under Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and Anr.

3. Learned counsel for Respondent No.2 submitted that, there is no reason to disturb the orders passed by the learned Magistrate and learned Sessions Judge. The documents which were sought to be produced are known to the petitioner. There is reference of these judgments in the cross examination of the petitioner conducted at the instance of the respondent. No prejudice would be caused to the petitioner, if the documents are allowed to be placed on record. It is submitted that, learned Magistrate had insisted that the compilation of document may be produced and

therefore these documents were adduced in evidence. Thereafter, there was change in Magistrate and Court was not regularly functioning on account of pandemic of Covid – 19. The learned Magistrate has assigned reasons for allowing the application. The cost was imposed upon Respondent No.2 which has been accepted by the petitioner. If the documents are not allowed to be taken on record, prejudice would be caused to the Respondent No.2. The Respondent No.2 had not delayed the proceedings in any manner. This fact has been referred to by the Court below while passing the order. The proceedings can be expedited by this Court.

4. On perusal of the documents on record, it is apparent that the proceedings initiated by the petitioner are pending since – 2013. The affidavit in evidence of the petitioner was adduced and she had been cross examined. The cross examination was completed on 21.08.2018. The petitioner has rightly submitted that there is no application on record at the time of completion of cross examination praying that the respondent may be permitted to furnish the compilation of documents. It is pertinent to note that the cross examination was completed on the aforesaid date and the application for placing the documents on record was preferred by the Respondent No.2 on 19.07.2019. The application is vague but it is not specified the reasons for placing on record the documents

and what is the relevance of the said document. The learned Magistrate has allowed the application by observing that closing pursis is already filed by the respondent. However, in view of Section 28 of the DV Act, production of documents is allowed. To give an opportunity to respondent to file documentary evidence on record was subject to cost of Rs.1,000/-. The learned Sessions Judge has confirmed the order of learned Magistrate by observing that the respondent has not been delaying the proceedings. It cannot be considered as cogent reason for allowing the application preferred by the Respondent No.2. The opportunity was available to the Respondent No.2 to insist upon exhibiting the said documents when the cross examination of the petitioner was conducted. The application was preferred belatedly. It was not made clear as to under what provisions such application is made and entertained by the Court. Considering the factual aspects of this matter, the impugned orders are required to be set aside.

5. Hence, I pass the following order :-

ORDER

- i. Writ Petition No.1307 of 2021 is allowed;
- ii. Impugned order dated 14.11.2019 passed by the learned Chief Metropolitan Magistrate, Court, Ballard Pier, Mumbai and order dated 22.01.2021 passed by learned

Additional Sessions Judge, City Civil & Sessions Court, Gr.
Mumbai in Criminal Appeal No.992 of 2019 are set aside;

iii. Writ Petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)