

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

CRIMINAL APPLICATION (APL) NO.95 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Rachana w/o Sanjay Joshi

WITH

CRIMINAL APPLICATION (APL) NO.96 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Rachana w/o Sanjay Joshi

WITH

CRIMINAL APPLICATION (APL) NO.105 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Rachana w/o Sanjay Joshi

WITH

CRIMINAL APPLICATION (APL) NO.103 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Siddharth s/o Sanjay Joshi

WITH

CRIMINAL APPLICATION (APL) NO.106 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Rachana w/o Sanjay Joshi

WITH

CRIMINAL APPLICATION (APL) NO.107 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Rachana w/o Sanjay Joshi

WITH

CRIMINAL APPLICATION (APL) NO.108 OF 2022

M/s Khemchand and Sons Through its Proprietor, Rajesh s/o Khemchand Thawani
Vs.

Rachana w/o Sanjay Joshi

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. N. Dani, Advocate for applicants in all matters.

Mr. S. S. Sitani, Advocate for respondents in all matters.

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/02/2022

Heard Mr. Dani, learned counsel for the applicant in all matters and Mr. Sitani, learned counsel for the respondent in all matters.

2. The order dated 21.01.2022 records the nature of dispute between the parties, as assailed in this petition in para 3. It is not disputed by Mr. Sitani, learned counsel for the respondents that by the order dated 16.03.2019, the application at Exh.60, seeking permission to cross-examine CW No.2 - Sanjay Joshi came to be allowed, as is apparent from para 7 of the said order, however, it appears that inadvertently in operative part, it has been stated that Exh.60 has been rejected. Thereafter, the applicant filed an application at Exh.70 for permission to cross-examine CW No.2 on 01.11.2021, which came to be rejected, by the impugned order, upon the presumption that the application below Exh.60 stood rejected on 16.03.2019, as indicated in the operative part of the said order. The order dated 16.03.2019 was passed in two matters, namely, Application Nos.108 of 2022 and 106 of 2022 and in the

others matters the date of the order is 01.02.2020, however the position remains the same.

3. This being the situation, it is clearly apparent that the impugned orders have been passed upon a misconception as to the nature of the order below the application to cross-examine. As all the orders are identically worded, for the sake of convenience, only order quoted in Application No. 95 of 2022 (page 70) below Exh. 60, in which the relevant portion is in para 7, is quoted as under :

“..... Therefore, looking into the private complaint case, the old matter of the year 2016, when now complainant has adduced evidence of both, it would be proper and justifiable for the parties to proceed in the present matter and having regard to the above with direction to the applicant to proceed in the present case by cross-examining Sanjay Joshi C.W.2.”

4. In view of the above position, the impugned orders are clearly not justified and the same are quashed and set aside by permitting the applicant, to cross-examine CW. No.2 - Sanjay Joshi.

5. Mr. Sitani, learned counsel for the respondent in all matters submits, that the conduct of the applicant, has always been of procrastination in the matter and in spite of the fact that several pursis were filed in the proceedings, stating that the impugned order would be challenged, nothing was done for a period of more than a year. He, therefore, submits that in this case

appropriate costs ought to be imposed. The record indicates that though the orders permitting the cross-examination of CW No.2 were passed on 16.03.2019 and 01.02.2020 respectively, however, no steps have been taken by the applicant either to get the order clarified if it was so deemed necessary or to cross-examine CW No. 2, who was stated to be present in the Court all the time, considering which, it would be appropriate to impose costs. The applicant, therefore, shall be liable to pay costs of Rs.5,000/- (Rs. Five Thousand only) in each of the matter to the complainant, before the cross begins. It is further directed that the party shall appear before the learned Trial Court on 21.02.2022, on which date, the accused shall proceed with the cross of the CW No.2 and complete it on the same day. It is further directed that the applicant/accused shall not protract the trial by seeking unnecessary adjournments and the learned Trial Court is directed to decide the matters finally by 30.04.2022.

The criminal applications are allowed in the above terms.

JUDGE

Sarkate