

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

CRIMINAL WRIT PETITION NO. 714 OF 2023

Mrs. Kashish Anil Bhatia

..Petitioner

Versus

Anil Gopal Bhatia & Ors.

..Respondents

Mr. Raju M. Yamgar a/w. Maruti M. Burungale for Petitioner.

Ms. Chaula Solanki a/w. H. H. Nagi a/w. Niranjana Pradhan a/w.
Rinky Kanojia i/b. Nagi & Associates for Respondent Nos.1 to 3.

Mr. Arfan Sait, APP for State/Respondent No.4.

CORAM : SARANG V. KOTWAL, J.

DATE : 8 JUNE 2023

PC :

1. The Petitioner, who is original Applicant before the Metropolitan Magistrate, 27th Court, Mulund, has preferred this petition challenging various orders passed by the said Court. The Applicant has filed an application U/s.12 of the Protection of Women From Domestic Violence Act, 2005. The Petitioner is the wife of the Respondent No.1.

2. Heard Shri. Raju Yamgar, learned counsel for the

Petitioner, Ms. Chaula Solanki, learned counsel for the Respondent Nos.1 to 3 and Shri. Arfan Sait, learned APP for the State/Respondent No.4.

3. The prayer clause (c) of this petition mentions the challenge to various orders passed in the said proceeding i.e. C.C.No.250/N/2011. All these orders pertain to certain documents which the Petitioner wanted to bring on record. Vide those orders, some of the documents were permitted to be brought on record and other documents were not allowed to be brought on record; as according to learned Magistrate, they were not in proper form and/or they were not admissible.

4. Learned counsel for the Respondents submitted that, all these documents which were not permitted to be brought on record were not admissible and, therefore, learned Magistrate was correct in his approach.

5. Learned counsel for the Petitioner relied on the observations of the Hon'ble Supreme Court in the case of ***Bipin Shantilal Panchal Versus State of Gujarat and another***¹.

¹ (2001) 3 Supreme Court Cases 1

6. I have considered these submissions and I have perused the impugned orders. The proceedings are still going on before the Magistrate's Court. The challenge in this present petition shows how the proceedings are unnecessarily delayed and this very issue is addressed by the Hon'ble Supreme Court in the case of *Bipin (supra)*. In this context, paragraph-14 of the said Judgment is important; which reads thus:-

“14. When so recast, the practice which can be a better substitute is this : Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided "at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it-clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed).”

7. The same approach can be adopted in the present proceeding, as well.

8. Learned counsel for the Respondent Nos.1 to 3 also accepts that the procedure laid down by the Hon'ble Supreme Court can be followed in the present proceeding.

9. It is, precisely, to avoid the delay in examining the witness such guidelines are given by the Hon'ble Supreme Court. This is a fit case in which the Magistrate must follow the procedure laid down in *Bipin's case (supra)*. Both learned counsel informed this Court that, at this particular stage of the proceeding, the Petitioner is still being examined to prove her case. Therefore, she can be permitted to produce the documents before the Trial Court subject to the objections by the Respondent Nos.1 to 3; which can be considered by the trial Court at the concluding stage, as laid down by the Hon'ble Supreme Court in the case of *Bipin (supra)*.

10. Hence, the following order:

ORDER

- i) Learned Metropolitan Magistrate, 27th Court, Mulund shall follow the procedure laid down by the Hon'ble Supreme Court in *Bipin's case (supra)* in respect of documents produced by the

Petitioner in this proceeding.

- ii) The Respondent Nos.1 to 3 are at liberty to raise objections which shall be considered by the Magistrate at the appropriate stage, as observed by the Hon'ble Supreme Court.
- iii) The documents shall be marked by learned Magistrate subject to the objections raised by the Respondent Nos.1 to 3; which shall be decided at an appropriate stage, as laid down by the Hon'ble Supreme Court in *Bipin's case (supra)*.
- iv) The Applicant is also at liberty to prove her documents in accordance with law by tendering the evidence of the relevant witnesses.
- v) All the contentions raised by both the parties are specifically left open.
- vi) The Petition is disposed of.

(SARANG V. KOTWAL, J.)