

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1099 OF 2018**

Yashika Budhrani	]	
Aged: 43 years,	]	
Occupation: Home Maker	]	
Presently residing at C/o Mohanlal	]	
Virvani, A 1/7, Krishna Duplex,	]	
Vasana Road, Vasana, Vadodara	]	
390007.	]	Petitioner

Vs.

1. Sandeep Budhrani	]
Aged: about 48 years,	]
Occupation : Business	]
Building 8, Flat No.124, Mira	]
Housing Society, Shankarsheth	]
Road, Pune - 411 037.	]

2. The State of Maharashtra	]	Respondents
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Mr. Rajeev Ravi a/w Ashok Garje, for Petitioner.

Mr. P. K. Sanghrajka, for Respondent No.1.

Mr. N.B. Patil, APP, for Respondent No.2-State.

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CORAM	: PRITHVIRAJ K. CHAVAN, J.
RESERVED ON	: 12th JUNE, 2023.
PRONOUNCED ON	: 20th JUNE, 2023.

ORDER:

1. Heard learned Counsel for the petitioner and respondent No.1, perused the record.

2. Shorn of unnecessary details, a few facts germane for disposal of this petition are summarized as under.

3. Petitioner and respondent No.1 are husband and wife. Their marriage was solemnized at Pune on 7th July, 2003. After the marriage, both of them went to Dubai. On 20th December, 2003, the petitioner took up a job in Dubai and was earning independently. The couple was blessed with a daughter on 8th August, 2012.

4. It is alleged that thereafter respondent No.1 subjected the petitioner to mental as well as all other types of cruelty on account of demand of money. The respondent No.1 forced the petitioner to execute a power of attorney in his favour to manage all the transactions of business which was run by the respondent in the name of the petitioner including the bank accounts and financial affairs.

5. In March, 2015, respondent No.1 lost his job. He has been staying in Dubai on visitor's visa sponsored by the petitioner on the basis of her employment.

6. The petitioner returned to India with minor daughter on 17th January, 2016 and started residing at her natal house in Vadodara, Gujarat. She could bring only her limited *stridhan* and other belongings from Dubai. Rest of her belongings are lying in Dubai.

7. Thereafter, the petitioner filed an F.I.R on 10th February, 2016 against the respondent with Mahila Police Station under Sections 498 (A), 406, 506 (2) and 294 (B) of the Indian Penal Code and sections 3 and 7 of the Dowry Prohibition Act. A criminal case arising out of the said crime is pending in the Court of Judicial Magistrate First Class at *Vadodara*.

8. On 2nd June, 2016, the petitioner moved an application for interim maintenance under section 24 of the Hindu Marriage Act before Family Court, Pune in RCOR Petition No. PA/176 of 2016. The said application was rejected by the Family Court, Pune on 25th October, 2016. While rejecting the application *pendente lite* under section 24 of the Hindu Marriage Act, the learned Judge of the Family Court criticized the petitioner as regards her alleged conduct of suppression of material facts from the Court by not

disclosing about huge amount lying in her account which she transferred in the account of her father. Several other aspects have also been highlighted by the learned Judge Family Court. While rejecting the petitioner's application, following order came to be passed by the learned Judge.

"O R D E R"

1. Application stands rejected with exemplary cost.
 2. A cost of Rs.10,000/- is saddled on respondent for making a patently false and an audacious claim of interim maintenance in spite of having lakhs of rupees in the bank account.
 3. An appropriate show cause notice be issued against respondent, asking her why enquiry contemplated under Section 340 of The Criminal Procedure Code, r/w Section 195 of The Criminal Procedure Code, r/w Section 193 of IPC be not initiated against her.
 4. Dictated and declared in open Court".
9. It is apparent that a show cause notice was issued to the petitioner. Thereafter, the impugned order came to be passed below Exhibit 1, 22, 142 and 158 by the Family Court, Pune directing the Officer of the Family Court, Pune to file a complaint

against the petitioner before the Judicial Magistrate First Class, Pune for making a false statement on oath before a Judicial Authority. The Court below has mainly reproduced what has been observed by the earlier Judge while rejecting the petitioner's application for interim maintenance.

10. At the outset, question is whether the alleged conduct attributed to the petitioner by the Court below amounts to perjury? Section 191 of the I.P.C defines and contemplates giving false evidence. The petitioner has not adduced any evidence before the Family Court. As per section 3 of the Evidence Act, "evidence" means and includes;

- (i) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence.

11. Learned Counsel for the petitioner submits that it is apparent from the record that an application for interim maintenance was made on 2nd June, 2016 on which date the petitioner was unemployed. Admittedly, she got a job on 27th June, 2016, meaning thereby, on the date of application, she was not earning any income. Whatever has been stated by her is in the form of an

affidavit and, therefore, it cannot be said that the petitioner had knowingly and intentionally given in evidence which, according to the learned Counsel for the petitioner is not "evidence" at all in view of section 3 of the Evidence Act.

12. The learned trial Court has patently erred in making such observations. Order-19, Rule-1 and 2 of the Code of Civil Procedure r/w section 3 of the Evidence Act would indicate that the affidavits are not included in the definition of "evidence" as per section 3 of the Evidence Act and can be used as evidence only for sufficient reasons passed under Order-19, Rule-1 and 2.

13. Learned Counsel for the petitioner has, therefore, rightly placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Sudha Devi Vs. M.P. Narayanan, 1988 AIR (SC) 1381**. It has been laid down in this case that in view of Order-19, Rule-1 and 2 of the C.P.C, affidavits are not included in the definition of "evidence" under section 3 of the Evidence Act and can be used as evidence only for sufficient reasons passed by the Court under Order-19, Rule-1 and 2 of the C.P.C.

14. What has been tendered by the petitioner herein is simply an affidavit, that too, admittedly, on the date of application, she had no employment. The Court below, at the most, could have simply rejected her prayer for interim maintenance instead of going further to an extent in passing the impugned order by giving her show cause notice. Be that as it may.

15. Learned Counsel for the petitioner has also placed reliance on a judgment in case of **Gita Chatterjee Vs. Probhat Kumar Chatterjee, AIR 1988 Cal 83**. Paragraphs 2, 3 and 6 of the said judgment read thus;

" 2. The wife has not denied that she owns those two plots of lands but has averred in her affidavit that those two plots of vacant land measuring about 3 Cottahs and 2 Cottahs yield no income at all. This averment has not been countered by the husband in any way, but it has been very strongly urged by his learned Counsel, Mr. Bhattacharjee that even if there is no return, in cash or in kind, coming in out of those properties, still then those must be taken into consideration in deciding the maintainability of this application at the instance of the wife under Section 24. Mr. Bhattacharjee has urged that Section 24 mandates the Court to have regard to the "income" of the petitioner as well as of the opposite party and in the context of the

language of Section 24 the expression income would also include properties, whether presently yielding any return or not. Since (to borrow from Tennyson) words, like nature, may only half-reveal and may very well half-conceal the soul within and since such half-concealed soul may only be discovered from the context in which a particular word has been used, we propose to reproduce the provisions of Section 24 hereinbelow :--

"Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondents to pay to the petitioner the expenses of the proceeding, and monthly, during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

3. It is generally said that income is an expression of elastic ambit, a word of the broadest connotation, a term difficult to define in any precise general formula. But even in its widest amplitude, the expression, in our view, cannot take within its sweep the capital assets like lands and hereditaments and can only include the return accruing from those assets. Fruits of the tree are income, but not the tree; crops from the field are income, but not field, rents from land or house are income, but not the land or the house. Even our law relating to taxes on income, with its far-flung and ever-widening tentacles, has not covered capital assets for which a separate law relating to wealth-

taxes had to be enacted. It is true that by an artificial definition, our Income-tax law has brought within the ambit of income, not the capital assets, but only the capital gains, i.e., profits or gains arising from the transfer of capital assets. But it is not the case of the husband that the wife has transferred any of those lands and has earned or is earning any income in the shape of capital gains.

6. As is obvious from the scheme of the Hindu Marriage Act, the Legislature in enacting Section 24 intended to provide for some interim ad hoc relief to the applicant spouse during the carriage of the proceeding to enable such spouse to prosecute or contest the proceeding. In making such an interim order, which is to operate only during the continuance of the proceeding, the Legislature is not expected to require the Court to prepare a balance sheet, so to say, of all the income and also of other capital assets and properties of the parties and that is why the Legislature has deliberately used the word income only and has required the Court to have regard only to the income of the parties. In making an order of permanent alimony, as under Section 25 of the Act, which would remain operative for the whole life of the petitioner, the Court should obviously be required to have regard not only to the income but also all other assets and properties of the parties. That is why Section 25, the Hindu Marriage Act dealing with permanent alimony clearly provides that :

"the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or, periodical sum as, having regard to the respondent's own income and other property, if any the income and other property of the applicant, the conduct of

the parties and other circumstances of the case, it may seem to the Court to be just".

The ratio laid down therein is applicable to the facts of the present case.

16. It would not be out of place to make a reference to a judgment of the Constitution Bench of the Hon'ble Apex Court in case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another, (2005) 4 Supreme Court Cases 370**, wherein the Hon'ble Supreme Court interpreted the scope of section 340 of the Cr. P.C. Paragraphs 23 and 24 of the said judgment read thus;

" 23. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1) (b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interests of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the Court by weighing not the magnitude of

injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the

complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

17. Upshot of the aforesaid discussion is that the impugned order needs to be quashed and set aside. As such, it is quashed and set aside.

18. If any complaint is filed by the Registrar of the Family Court, Pune in the Court of Judicial Magistrate First Class, Shivajinagar, Pune or any other Court, the same shall also stand quashed and set aside.

19. The petition is disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]