

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

CRIMINAL WRIT PETITION NO. 1273 OF 2023

Tausif Salim Patel

.. Petitioner

Vs.

Wasima Tausif Patel & Ors.

.. Respondents

.....

Mr. Vikrant Shinde a/w Bhavika Shinde for the petitioner

None for the respondents

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 10th APRIL, 2023

P.C.

1. Heard.

2. The petitioner – husband has challenged two orders of the Family Court, Pune dated 8th November 2022 and 9th December 2022 passed in Petition E-No. 90 of 2020.

3. An order dated 8th November 2022 is in respect of No Cross Examination of the respondent-wife due to the absence of the petitioner and his advocate when called.

4. By an order dated 9th December 2022, the learned Judge has rejected an application by the petitioner for setting aside No Cross

Examination order.

5. Learned Counsel for the petitioner has invited my attention to the Roznama dated 9th December 2022, which reads thus :-

“The petitioner and her Adv. are present. The respd. and his Adv. are absent.

The matter is already preceded without ws against respd. and till today he has not filed ws. Moreover, today also nobody turned up from his side. Hence application stands rejected.

*Signed
09/12/2022”*

6. It is submitted that the petitioner is a resident of Satara. Due to the non-availability of transportation, he could not reach the Family Court at Pune at the time of recording the evidence of respondent-wife. However, by the time he reached, the impugned order came to be passed.

7. Learned Counsel for the petitioner has also invited my attention to a fact that written statement has already been filed by the petitioner-husband on 25th November 2021, which has been duly exhibited (Exh.19) by the Family Court. That being so, it is apparent that the learned Judge of the Family Court has committed

a grave error in observing that the matter had already been proceeded without the written statement of the petitioner-husband.

8. This Court while exercising its supervisory jurisdiction can interfere and correct the error which would indeed go to the root of the matter by thwarting the legitimate right of the petitioner – husband to cross-examine the respondent-wife.

9. The learned Judge ought to have minutely perused the record before passing an order dated 9th December, 2022.

10. Even the impugned order dated 8th November 2022 is *sans* any reason. The matter needs to be adjudicated on merits by giving due opportunity to the petitioner. Indeed, the impugned orders are against the principles of natural justice and in ignorance of fact that the written statement is on record. The orders are, therefore, required to be quashed and set aside.

11. The petition is allowed in terms of prayer clause (a).

12. The Family Court, Pune is directed to frame necessary issues on the basis of the pleadings of the parties and, thereafter proceed

further in accordance with law.

13. The petitioner shall appear before the Family Court, Pune on 19th April, 2023.

14. Petition stand disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)