

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

CRIMINAL WRIT PETITION NO.2911 OF 2016

Dr. Anand Prem Ojha

.....Petitioner

Versus

Meeta Anand Ojha

and another

.... Respondents

Mr. Anurag Jain, Advocate for the Petitioner.

Mr. Nitin P. Deshpande, Advocate for the Respondent No.1.

Ms. M. R. Tidke, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 27th JUNE, 2023

P.C. :

1. The Petitioner has challenged the order passed by the Court of Sessions at Pune in Criminal Appeal No.213/2015. Vide order dated 2.7.2016, that appeal was dismissed. He has also challenged the order passed in Criminal Misc. Application No.469/2014 by the trial Court whereby directions were issued to proceed with the matter 'exparte'.

2. Heard Shri Anurag Jain, learned counsel for the Petitioner, Shri Nitin Deshpande, learned counsel for the

Respondent No.1 and Ms. M. R. Tidke, learned APP for the Respondent-State.

3. The Petitioner is the original Respondent No.1 in the proceedings filed by the Respondent No.1 herein. The proceedings were filed under various provisions of the Protection of Women from Domestic Violence Act, 2005. On 20.6.2014, following order was passed by learned Magistrate:

“Postal acknowledgment of notice is returned to the Court. In spite of service of notice opponent No.1 is absent. Hence ex parte order is passed against respondent No.1”

4. The Petitioner, then, went before the same Court and prayed for setting aside of that order. On this occasion, vide order dated 20.12.2014 learned Magistrate passed following order :

“No specific reason is mentioned in the application for setting aside ex parte order. No reason for delay mentioned, what caused the opponents from appearing in the Court not stated. Application sans merit hence rejected.”
(quoted as original)

5. The Petitioner then challenged that order vide Criminal Appeal No.213/2015 before the Sessions Court at Pune. On this occasion also following order was passed on 2.7.2016 :

“Perused the record. Today the matter is for argument. Despite repeatedly called since morning, the appellant and his counsel were absent. It reveals from the record that the appellant and his counsel have lost interest in prosecuting the appeal and that led me to pass the following order :

O R D E R

The appeal stands dismissed in default.”

6. The Petitioner is challenging these orders passed by the Magistrate as well as by the Sessions Judge.

7. Learned counsel for the Petitioner submitted that at the relevant time in the year 2014, the Petitioner was in London. He is practicing as a Doctor. The notice was received by his old father at Jaipur and, therefore, the Petitioner could not make immediate arrangement to represent himself before the Magistrate. In those

circumstances, the first order dated 20.6.2014 came to be passed. He then made efforts to get that order set aside by moving an application, but, on 20.12.2014 even that application was rejected.

8. Learned counsel submitted that the Applicant had not acted negligently. It is only in the aforesaid circumstances, he could not represent himself before the learned Magistrate's Court. He, therefore, challenged said order before the Sessions Court at Pune, but, unfortunately on the day when the matter was called out even his Advocate was not present and, therefore, on 2.7.2016 his appeal was dismissed. He submitted that thus, since the Petitioner was in London on all these occasions, he had very limited control over the proceedings and, therefore, these impugned orders came to be passed.

9. Learned counsel submitted that on merits, the Petitioner had a good case because a Court in U.K. has granted divorce in his favour. He, therefore, submitted that the Petitioner be granted reasonable opportunity to defend

himself in the proceedings before the Magistrate in the interest of justice.

10. Learned counsel for the Respondent No.1 strongly opposed these prayers. He submitted that all along the Petitioner's negligence is clear from the record and no leniency can be shown to him.

11. I have considered these submissions. In these proceedings which are pending since the year 2016, stay was granted since 28.9.2016. Many years have passed and the proceedings before the trial Court is still pending without any decision on the merits.

12. Considering the grounds made out by learned counsel for the Petitioner, I am of the opinion that the Petitioner can be given a fair chance to defend himself in the proceedings before the Magistrate. However, looking at the fact that the Respondent No.1 had to contest in the Sessions Court and in the High Court, some reasonable cost can be imposed on the Petitioner.

13. Hence, the following order :

:: O R D E R ::

- i. The order dated 2.7.2016 passed in Criminal Appeal No.213/2015 by the Additional Sessions Judge, Pune is set aside.
- ii. The order dated 20.6.2014 passed by learned Judicial Magistrate, First Class, Pune in Criminal Misc. Application No.469/2014 is set aside on the condition that the Respondent No.1 is paid Rs.20,000/- (Rupees Twenty Thousand only) through Demand Draft within a period of six weeks from today.
- iii. On producing an acknowledgment of such payment, learned trial Court shall proceed with the matter and permit the Petitioner to contest the proceedings before him.
- iv. All contentions of both sides are left open.
- v. With these directions, the Petition is disposed of.

(SARANG V. KOTWAL, J.)