

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

CRIMINAL APPLICATION NO.488 OF 2022

Aishwarya Ashutosh Sale ...Applicant
Versus
Ashutosh Shivaji Sale & Anr ...Respondents

Mr. Anand S. Shalgaonkar, Advocate for Applicant.
Mr. Yogesh Y. Dabke, A.P.P. for State/Respondents.

CORAM : SARANG V. KOTWAL, J.
DATE : 8th NOVEMBER 2023

PC :

1. The Applicant is the wife of the Respondent No.1. The parties are fighting different proceedings. The subject matter of this Application is Criminal Miscellaneous Application No.415/2022 pending before the Judicial Magistrate, First Class, Mangalvedha, District Solapur. By that Application, the Respondent No.1 had prayed for issuance of search warrant and for direction to produce daughter of the Applicant and the Respondent No.1 before the Court. That Application was preferred on 16th December 2022 before the J.M.F.C., Mangalvedha. The learned Magistrate issued notice to the P.I. of Mangalvedha police

station in that connection. At that stage, the Applicant had preferred the present Application. Initially, the prayer was made for transfer of those proceedings from the Court of J.M.F.C., Mangalvedha, District Solapur to the Court of J.M.F.C., Junnar, District Pune. This Court permitted the Applicant to carry out the amendment to add the prayer for quashing of Criminal M.A. No.415/2022 pending before the J.M.F.C., Mangalvedha. The notice was issued to the Respondent No.1 vide order dated 9th June 2023. The office noting shows that the notice issued to the Respondent No.1 was duly served. He has chosen not to appear in this Application, therefore, I have heard the learned Counsel for the Applicant.

2. Learned Counsel for the Applicant submitted that the Applicant's daughter is four and half years of age and she is in need of care and custody of the Applicant. He relied on a copy of the agreement dated 4th December 2022, wherein, a document was executed by the Applicant as well as the Respondent No.1 on a stamp paper; in which it was agreed that the custody of the daughter would be with the present Applicant. There were other

averments regarding access and video calls etc.. He submitted that, considering this background, the custody of the child with the Applicant was a lawful custody and, therefore, Section 97 of Cr.P.C. was not applicable.

3. I have considered these submissions and in my opinion, these submissions will have to be accepted. Section 97 of Cr.P.C. reads thus:

“97. Search for persons wrongfully confined.— If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.”

4. By no stretch of imagination can it be said that the Applicant's daughter is confined by the Applicant which may

amount to an offence. Therefore, the proceeding under Section 97 of Cr.P.C. preferred by the Respondent No.1 vide Criminal M.A. No.415/2022 itself is misconceived and the learned Magistrate should not have issued notice on such Application. Considering this, the present Application will have to be allowed.

5. Hence, the following order:

O R D E R

- i) The Criminal M.A. No.415/2022 filed before the Judicial Magistrate First Class, Mangalvedha, District Solapur under Section 97 of Cr.P.C. by the Respondent No.1 and the orders passed thereon are quashed and set aside.
- ii) The Application is allowed in the aforesaid terms.

(SARANG V. KOTWAL, J.)