

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPW) NO. 43 OF 2023

IN

CRIMINAL WRIT PETITION NO. 44 OF 2023 (D)

Rajnish s/o. Rajendrapal Naidu

.VS.

Mrs Neha W/o. Rajnish Naidu (Joshi) and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Petitioner in-person

Mr J. D. Bastian, Advocate for the respondents

CORAM : G.A. SANAP, J.

DATE : MARCH 06, 2023.

CRIMINAL APPLICATION (APPP) NO. 220 OF 2023

Heard.

2. The prayer made for production of
document is allowed.

3. The criminal application stands **disposed**
of, accordingly.

CRIMINAL APPLICATION (APPW) NO. 43 OF 2023

4. Heard.

5. Petitioner in-person has made this application seeking direction to the Family Court No. 3, Nagpur to decide the criminal miscellaneous application, which is filed under Section 340 of the Code of Criminal Procedure (For short 'the Cr.P.C.'), finally with the main petition and for the interim order to stay the proceeding bearing petition No. E-443 of 2013 filed under Section 125 of the Cr.P.C. and all the matters arising out of the said petition.

6. According to the petitioner, now the petition filed under Section 125 of the Cr.P.C. has been posted on 18.03.2023 for judgment. It is stated that he has made an application under Section 340 of the Cr.P.C. which has been numbered as CMA No. 17 of 2023. It is the contention of the petitioner that in terms of the order dated 24.11.2022 passed by the Hon'ble Apex Court in Miscellaneous Application No. 898 of 2021 in Crl.A. No. 730 of 2020, the learned Trial Court is required to decide all the applications alongwith the main matter. Further grievance has been made that he has been forced to pay the arrears of the interim maintenance. It is his contention that since the matter is

fixed for final decision, the execution of the said order can proceed after the decision of the application. In short, it is his submission that CMA No. 17 of 2023, filed under Section 340 of the Cr.P.C., making serious allegations of giving false evidence, needs to be decided with the main petition.

7. Learned Advocate appearing for the respondents submitted that this Court by order dated 25.01.2023 has decided Criminal Writ Petition No. 44 of 2023, filed by the petitioner, challenging the order dated 06.01.2023 passed by the learned Judge of the Family Court No. 3 and confirmed the order passed by the learned Judge of the Family Court dated 06.01.2023. By the said order dt. 06.01.2023, application Exh. 469 made by the petitioner under Section 340 of the Cr.P.C. was rejected by Family Court for the reasons recorded in the order. The learned Judge, as per this order, granted liberty to the petitioner to file separate proceedings under Section 340 of the Cr.P.C. It is further submitted that the present application made by the present petitioner is one more attempt to delay the decision in the main application.

8. It is to be noted that by order dated 25.01.2023, this Court concurred with the view taken by the learned Judge of the Family Court and therefore, dismissed the criminal writ petition. The reasons to agree with the view taken by the learned Judge of the Family Court have been recorded in said order dated 25.01.2023. It does not require any further dilation.

9. Again in this application, the prayer is made seeking direction to the learned Judge of the Family Court to decide the application bearing CMA No. 17 of 2023 alongwith the main petition. It is seen on perusal of the facts stated in the application and the prayer, that it is nothing but an attempt to seek the review of the order passed by this Court dated 25.01.2023. It is to be noted that the matter before the Family Court has been expedited by the Hon'ble Supreme Court of India. Learned Judge is bound to comply the directions issued by the Hon'ble Supreme Court of India. Therefore, in my view, the prayer made in this application cannot be granted.

10. The petitioner submitted that he has filed the detailed written notes of arguments and the learned Judge of the Family Court is required to take into consideration all his submissions set out in the written notes of argument. The petitioner further submitted that he has apprehension that the learned Judge will not take the written notes on this point into consideration because at the time of argument by his Advocate, learned Judge has observed that the scope of inquiry could not be widened and it should be kept confined to the crux of the application under Section 125 of the Cr.P.C. As far as this aspect is concerned, the learned Judge would be required to take the contentions raised in the written notes of argument into consideration to deal with the same appropriately. The basic crux of the petitioner's submissions is that false evidence has been given by the respondents. It is to be noted that while deciding the application learned Judge would be required to consider whether any false evidence has been given or not. In my view, such a finding would be possible while appreciating the evidence adduced by the parties. Be that as it may, it seems that the apprehension expressed by the petitioner

that the learned Judge may not take this into consideration is ill-founded.

In view of the above, I am of the opinion that this application cannot be allowed. Accordingly, the application stands **dismissed**.

(G. A. SANAP, J.)

Namrata