

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

CRIMINAL WRIT PETITION NO.477 OF 2022

Gajendra S/o. Govindrao Waikar

.VS.

Laxmi W/o. Gajendra Waikar

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 A. G. Hunge, Advocate for respondent

CORAM : G.A. SANAP, J.
DATE : MARCH 20, 2023.

Heard the petitioner in-person and the learned
Advocate for the respondent.

2. The order impugned in this petition is dated 13.11.2021, whereby the learned Judicial Magistrate First Class, Nagpur filed/rejected the application at Exh. 19 made by the petitioner under Section 340 of the Code of Criminal Procedure, 1973 (For short 'Cr.P.C.) read with other sections of the Cr.P.C. and Indian Penal Code for initiation of proceeding against the respondent for giving false evidence in the petition.

3. The Criminal MA No. 4158 of 2018 was filed by the respondent against the petitioner, as per the provisions of the Protection of Women From Domestic Violence Act, 2005. It appears that in the meantime the parties had agreed to settle their dispute and withdraw the proceedings filed by them in various Courts.

4. The petitioner and the learned Advocate for the respondent submit that for some reason or the other the settlement between the parties failed. Learned Advocate for the respondent submits that in view of the settlement, Criminal M.A. No. 4158 of 2018 was withdrawn by the respondent. Learned Advocate submits that the respondent was misled by the petitioner and as such, she withdrew the proceeding. Learned Advocate further submits that respondent will be making an application for restoration of the said proceeding, in view of the subsequent development and change in the circumstances. It is to be noted that the respondent would be free to take all such permissible steps under law in this direction. The question that remains to be addressed is the fate of the order dated 13.11.2021 passed by the learned Magistrate, which has been

challenged in this proceeding. Learned Magistrate, as can be seen from the perusal of the order, had observed that the application made by the petitioner below Exh. 19 would be decided at the time of the final adjudication of the matter. It is the grievance of the petitioner that even at the time of final adjudication as well as after final adjudication this application has not been decided.

5. It is to be noted that the proceeding under Section 340 read with other sections mentioned in the application at Exh. 19 was for the limited purpose and independent proceeding. The inquiry, in such a proceeding, has to be confined to the scope of the said proceeding. It is to be noted that since this is a separate & independent proceeding for redressal of the grievance of giving false statements in the proceeding, the Court is bound to decide the same after conducting the necessary inquiry, as mandated by law. Learned Magistrate, in view of the order passed on 13.11.2021 was bound by law to follow his order. In my view, the subsequent withdrawal of the proceeding by the respondent could not be said to be a hurdle in the way of the Magistrate to proceed further with this proceeding and decide it in

accordance with law by making necessary inquiry, as provided under law. In the facts and circumstance, this order is required to be set aside. Accordingly, the order dated 13.11.2021 is set aside. Learned Magistrate shall decide Exh. 19 in accordance with law.

6. The writ petition stands **disposed of**.

(G. A. SANAP, J.)

Namrata