



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

...

CRIMINAL APPLICATION (APL) NO. 1058/2023

Rajnesh Rajendrapal Naidu

..APPLICANT

v e r s u s

The State of Maharashtra

..RESPONDENT

.....
Mr Rajnesh Naidu, party-in-person
Ms.S.Z. Haider, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATE OF RESERVING : 21.08.2023

DATE OF PRONOUNCEMENT: 25.08.2023

PC:

Heard the learned counsel for the respective parties at length.

2. The applicant/party-in-person is aggrieved by the inordinate delay caused by the learned Judge of the Family Court in deciding an application filed by the applicant under Section 340 of the Criminal Procedure Code, (in short “the Code”).

3. Having heard the applicant, in-person and the learned APP, it appears that out of matrimonial discord between the applicant and his wife, number of proceedings are pending before the Courts, one of such proceeding was Petition No. E-443/2013 before the Family Court, Nagpur.

4. According to the applicant, the wife has made false allegations that she has been harassed – mentally as well as physically. The applicant submits that he has noted the falsities submitted by his wife and collected the evidence in this regard and moved an application u/s 340 of the Code before the Family Court (Exh.469). The applicant has also filed written note of arguments. According to the applicant, the application u/s 340 of the Cr.P.C. ought to have been decided before proceeding further. The Family Court, however, has finally disposed of the petition vide order dated 06.01.2023. He further submits that the Family Court has disposed of the application u/s 340 of the Code without any effective order by directing the applicant to file separate petition on the ground that enquiry pertaining to said application will consume a lot of time.

5. The applicant had challenged the said order before this Court in Writ Petition No.44/2023 which came to be dismissed, upholding the order passed by the Family Court. The applicant has then knocked the doors of this Court seeking modification of the order, which the applicant has withdrawn.

6. According to the applicant, as per oral direction of this Court, he had submitted the details of falsities committed by his wife in the original Petition No. E-443/2013 before the Family Court. The applicant had filed a separate CMA, u/s 340 of the Code before the Family Court, bearing CMA No.17/2023 on 2nd March 2023, in which notice has been issued to his wife. On 6th June 2023 the learned Family Court directed the applicant to file certified copies of relevant documents of the original petition No.E-443/2013. According to the

applicant, the original petition runs into 200 pages and will incur costs of Rs. 6,000/- to Rs.7,000/- and will also cause unnecessary delay and, therefore, moved an application before the Family Court to call the original petition No. E-443/2013. The application has however been kept pending and now listed on 31.08.2023.

7. The applicant, under the presumption that he will not be permitted to put forth detailed arguments as regards falsities submitted by his wife before the family Court, moved an application bearing APPW No.43/2023 in Writ Petition No.44/2023 before this Court. This Court dismissed the application by observing that all submissions made by the applicant in written note of arguments shall be considered by the Family Court while passing final judgment.

8. The applicant has then invited my attention to the Supreme Court's order dated 24.11.2022, by which directions were given to the learned Family Court to dispose of all pending applications along with main matter.

9. The grievance of the applicant is that the Family Court has passed the final judgment on 5th April,2023 but there is no whisper in the judgment about the falsities allegedly committed by his wife.

10. With the above said set of facts, the applicant has filed instant an application seeking a direction to the learned Judge of the Family Court to call the record of Petition No. E-443/2023, to decide CMA No.17/2023 and further a direction to decide the application within a period of two weeks.

11. The applicant has relied upon the judgment in the case of Vakil Prasad Singh vs. State of Bihar in Criminal Appeal No.138/2009. By inviting my attention to para no.12, the applicant submits that Article 21 of the Constitution of India confers a fundamental right on every person not to be deprived of his life or liberty except according to the procedure established by law and that the procedure should be reasonable, fair and just and therefrom flows the right to speedy trial.

12. Having given my thoughtful consideration to what has been argued by applicant in-person, his request to call the record of Petition No.E 443/2013 to decide the CMA No.17/2013, in my view, is quite reasonable, if what applicant has submitted as regards number of pages of the petition, is true. It appears that the application filed by the applicant u/s 340 of the Code was part of the petition No. E-443/2013. The learned Judge of the Family Court has while disposing of the petition, directed the applicant to file separate petition which the applicant has filed. The applicant has complied with the order passed by the learned Family Court.

13. The learned Judge of the Family Court is therefore, directed to consider favourably the request made by the applicant to call record of the Petition No.E 443/2013 to decide CMA No.17/2023 if there is no other legal impediment. So far as the second prayer is concerned which relates to direction to the Family Court to decide the application within two weeks, I do not feel it appropriate to issue such a direction. The Family Court had while disposing of the earlier application filed by the applicant has directed him to file separate application on the ground

that it will consume substantial time to conduct the enquiry. The applicant, however, is at liberty to make the necessary request before the Family Court for expeditious disposal of the application which, if made, shall be considered by the Family Court on its own merit.

14. With the above observations, the Application is partly allowed and disposed of in the aforesaid terms.

(ANIL L. PANSARE, J.)