



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 229 OF 2024

RATAN DATTARAO JADHAV

VERSUS

SAGARBAI W/O RATAN JADHAV AND ANOTHER

...

Mr. Surve Hemant, Advocate for the Petitioner

Mr. K. B. Jadhav, Advocate for Respondent Nos. 1 and 2.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 28th November, 2024

PER COURT :-

1. Rule, Rule made returnable forthwith and with the consent of the parties, the petition is heard finally.

2. By the present petition, the Petitioner challenged the order dated 29.08.2023 and 28.11.2023 passed below Exhs. 29 and 30 and 34 respectively, in PWDVA No. 24 of 2018 by the learned Judicial Magistrate, First Class, Kinwat, thereby rejected the applications under section 247 of the Criminal Procedure Code for issuance of witness summons to the Principal of Gajanan College, Nanded, Principal Sandeepani High School, Nanded and Principal, M.G.M.S. College of Engineering, Nanded.

3. The present respondent No.1 wife, with her daughter initiated a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 as well as proceeding under section 125 of the Criminal Procedure Code. Respondent No.1 wife also lodged an FIR against the Petitioner husband for the offence punishable under sections 498-A of the Indian Penal Code. The trial of the said matter is culminated in acquittal.

4. In the proceeding under the provisions of the DV Act, the Respondent wife examined her witnesses and thereafter, the present Petitioner/ husband/original non applicant filed evidence affidavit and undergone cross examination conducted on behalf of the respondent wife. Thereafter, the petitioner/husband filed application for issuance of witness summons to the Principal of Sandeepani High School, Nanded and the Principal of Gajanan College, Nanded to prove about the details of scholarship received by Respondent No.2 daughter, about her attendance and issuance of certificate as well as her academic performance record. The Petitioner husband also filed an applications for issuance of witness summons to the Principal of MGMS college of Engineering, Nanded to prove the respondent No.2 Subhangi's educational expenses including details of the scholarship etc. On

This order is modified as per speaking order dtd. 15.01.2025 928WP229-24-modified 29.08.2023 and 28.11.2023, the learned trial Court passed an orders below Exhs. 29, 30 and 34 holding that the present Petitioner/original non applicant has not denied relations between him and the respondents. The Petitioner/original non applicant examined himself and wanted to examine the Principal of Gajanan College, Nanded and Principal Sandeepani High School, Nanded who are not material witnesses to prove the fact of domestic violence, so also, the present petitioner/original Non applicant filed the applications to delay the proceedings.

5. Mr. Surve, the learned counsel appearing for the Petitioner/husband canvassed that the Petitioner has filed written statement and specifically denied about raising domestic violence as against Respondent No.1/original applicant No.1. So also, the petitioner/husband denied about not providing maintenance to respondent No.2. However, though the petitioner is regularly paying maintenance, Respondent No.1 wife time and again demanding expenses under the head of Educational expenses of Respondent No.2. Therefore, in order to prove the required educational expenses, it is necessary to examine the Principals of Gajanan Junior College and Sandeepani High School. However, the learned trial court passed the impugned order

This order is modified as per speaking order dtd. 15.01.2025 928WP229-24-modified holding that the respondents/applicants have filed an application under the provisions of D.V. Act and examination of both these persons is not necessary to prove the domestic violence.

6. The learned counsel for the respondents canvassed that the Petitioner examined the witnesses, so also, the respondents filed the evidence affidavit. In reply, the petitioner has not taken defence about not incurring educational expenses for Respondent No.2. However, the Petitioner only wanted to delay the matter and filed the applications for issuance of witness summons and the learned trial court justified while rejecting the application.

7. It is not in dispute about pendency of the proceedings under the DV Act instituted by the respondents against the present petitioner. Further, there is no dispute that Respondent No. 2 is pursuing study in the Engineering faculty in MGMS College of Engineering, Nanded. The Petitioner filed applications and prayed for issuance of witnesses summons to the Principal of Gajanan Junior College as well as Principal of Sandeepani High School in order to prove the educational expenses of Respondent No.2 who is daughter of the present petitioner and respondent No.1 because the present respondent No.2 also prayed for educational expenses of Respondent No.2 from the

Petitioner. The present Petitioner also filed Application Exh. 34 for issuance of witness summons in respect of gathering information about educational details and documents of respondent No.2. Therefore, in order to prove the required educational expenses whatever incurred for respondent no.2, it is necessary to examine the Principals of respective college/school.

8. In view of the above, the findings recorded by the learned trial court does not sustain and liable to be quashed and set aside and the petition deserves to be allowed. Hence, the following order:

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The orders passed below Exhs.29, 30 and 34 in PWDVA No.24 of 2018 are hereby quashed and set aside.
- (iii) The trial Court is hereby directed to issue witness summons to (1) Principal, Gajanan College, Nanded, (2) Principal, Sandeepani High School, Nanded and (3) Principal, MGMS College of Engineering, Nanded or authorized person on their behalf.
- (iv) The learned trial court shall record the evidence of these

This order is modified as per speaking order dtd. 15.01.2025 928WP229-24-modified

three witnesses or persons authorized on their behalf on before 31.01.2025 and no adjournment would be granted on trivial grounds.

(v) It is made clear that if the present respondents/original applicants fail to cross examine the witnesses on the dates scheduled by the learned trial court, in that event, their right to cross examine the witness would be ceased.

(iv) Rule is made absolute in the above terms.

(Y. G. KHOBRAGADE, J.)

JPChavan