



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

101 CRIMINAL WRIT PETITION NO. 585 OF 2023

Ritesh Deoram Patil

VERSUS

Kirti Ritesh Patil

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Advocate for the Petitioner : Mr. H.D. Deshmukh

Advocate for Respondent : Mr. Jitendra Patil

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CORAM : SHIVKUMAR DIGE, J.
DATED : 5th AUGUST, 2024.

PER COURT :-

1. By this writ petition, the petitioner is challenging the order dated 12.9.2022 passed by the Judicial Magistrate First Class, Bhusawal (for short "the trial court") on application Exh.20 in PWDVA No. 20 of 2020.

2. It is the contention of learned counsel for the petitioner that the petitioner had filed an application under Section 340 of the Code of Criminal Procedure (for short "Cr.P.C.") before the trial court. After filing the application, the trial court had passed order on said application "other side to say". The learned counsel further submitted that as per section 340 of Cr.P.C. the matter is between the trial court and the applicant. It was not necessary to call the say of the respondent on said application but this fact is not considered by the

trial court. Hence, requested to allow the application.

3. It is the contention of learned counsel for the respondent that both the applications i.e. application under section 125 of Cr.P.C. and the application under D.V. Act, filed by the respondent have been withdrawn by the respondent. The application under Section 340 of Cr.P.C. was filed in D.V. proceeding but said proceeding is withdrawn by the respondent so this petition has become infructuous. Hence, requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned order. On the application filed by the petitioner under section 340 of Cr.P.C. the trial court has called say of other side. As per the the view of the Hon'ble Apex Court in the case of ***State of Punjab vs. Jasbir Singh, reported in 2022 (6) K.L.T. 276***, it is not necessary to call say of other side. Considering, this fact, I pass the following order.

O R D E R

- I. The writ petition is allowed.
- II. The impugned order dated 12.9.2022 passed by the learned Judicial Magistrate, First Class, Bhusawal below Exh.20 in

PWDVA No. 20 of 2020 is quashed and set aside.

III. The impugned order of taking say of other side is quashed and set aside. The trial court shall decide the application under section 340 of Cr.P.C. without say, on its own merits, by keeping the point of maintainability open, as the respondent has withdrawn the main proceeding.

(SHIVKUMAR DIGE, J.)

rlj/