



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

1001 CRIMINAL WRIT PETITION NO. 1129 OF 2023

SURESH MADHAVRAO DANGAT

VERSUS

HEMA W/O SURESH DANGAT @ HEMA SHAHAJI JADHAV AND
ANOTHER

...

Advocate for the Petitioner : Mr. Joshi Rhshikesh A.

APP for Respondent/State : Mr.P.K. Lakhotiya

Advocate for Respondent no.1 : Mr. Savant Vilas P.

...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 13th June, 2024.

P.C.:

1. By this petition, the petitioner is praying for quashing of the orders passed by the learned Judicial Magistrate, First Class, Wadwani, Tq. Wadwani, Dist. Beed, below Exhibit-50 and Exhibit-54 in R.C.C. No.34 of 2021.

2. It is the contention of the learned counsel for the petitioner that respondent no.1-wife of the petitioner has filed application under section 125 of the Criminal Procedure Code against the petitioner, which is pending before the learned Judicial Magistrate, First Class, Wadwani (For short, "J.M.F.C. Wadwani"). Respondent no.1 has also lodged the complaint against the petitioner under section 498-A of the Indian Penal Code. On the said complaint, the police has registered the offence and the case on that complaint, bearing R.C.C. No.34 of 2021 is pending before the J.M.F.C. Wadwani. Both the matters are

pending before the same Court. Both the matters were kept for cross-examination of respondent no.1, the learned counsel for the petitioner had filed application before the trial Court below Exhibit-54, stating that he be permitted to cross-examine respondent no.1 in maintenance application first and thereafter he will cross-examine respondent no.1 in R.C.C. No.34 of 2021.

3. On the said application, the learned trial Court has passed the order observing that respondent no.1 has filed affidavit of examination-in-chief. Thereafter opportunity was given to the petitioner to cross-examine, the petitioner had sought time. The petitioner was directed to give Bhata of Rs.200/- to respondent no.1, the petitioner did not pay the said Bhata and on the next date also the petitioner is seeking adjournment. On that ground, the trial Court rejected the application below Exhibit-50 and has passed no cross order by forfeiting chance of cross-examination of the witness in R.C.C. The learned counsel further submitted that the petitioner is ready to cross-examine respondent no.1 on the same day, if he allows to cross-examine in maintenance application first and thereafter in R.C.C. no.34 of 2021. Hence he requested to allow the petition.

4. The learned counsel for respondent no.1 submits that he has not received any instructions from respondent no.1, hence his appearance be discharged.

5. It is contention of learned APP that the trial Court has considered

all the aspects while passing the orders. Sufficient opportunities were given to the petitioner to cross-examine the witness. The orders below Exhibit-50 and Exhibit-54 passed by the trial Court are legal and valid and no interference is required in it.

6. I have heard the learned counsel for the petitioner and learned APP.

7. Though learned counsel for respondent no.1 withdrew his appearance for respondent no.1. I am deciding this petition on merits as the writ petition is of the year 2023.

8. Admittedly, respondent no.1 has filed her affidavit of evidence in maintenance application and she is under cross-examination in R.C.C. No.34 of 2021. It is contention of learned counsel of the petitioner that petitioner be permitted to cross-examine the respondent no.1 in maintenance application first and thereafter he will cross-examine her in R.C.C. No.34 of 2021. As per statements of the learned counsel for the petitioner, the petitioner is ready to cross-examine respondent no.1 on the same day if it is convenient to the Court and the respondent no.1. In my view, the petitioner has right to cross-examine the respondent no.1. Hence, he can be permitted to cross-examine as he prayed for, subject to cost of Rs.5,000/- to be given to respondent no.1.

9. In view of the above, I pass the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The orders passed by the Judicial Magistrate, First Class, Wadwani below Exhibit-50 and Exhibit-54 are quashed and set aside.
- (iii) The petitioner is permitted to cross-examine respondent no.1 in maintenance application first and thereafter in R.C.C. No.34 of 2021.
- (iv) The said cross-examination be done on the same day, if possible to respondent no.1 and as per the convenience of the trial Court. If not on the same day, then within eight days it be done.
- (v) The costs of Rs.5,000/- be given in cash directly to respondent no.1 before the trial Court.
- (vi) The writ petition is disposed of accordingly.

[SHIVKUMAR DIGE, J.]

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