



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1011 CRIMINAL WRIT PETITION NO. 1597 OF 2023

Kalyansingh Narayansingh Thakur
VERSUS
The State of Maharashtra and another

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Advocate for the Petitioner : Mr. Devdatt P. Palodkar
APP for Respondent No.1: Mr. R.B. Dhaware
Advocate for Respondent No.2 : Mr. Avinash N. Barhate Patil

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CORAM : SHIVKUMAR DIGE, J.
DATED : 27th JUNE, 2024.

PER COURT :-

1. By this writ petition, the petitioner has challenged the order dated 31.08.2023 passed below Exh.153 in R.C.C. No.81 of 2014 by the learned Judicial Magistrate, First Class, Shrirampur, whereby the application filed by respondent No.2 under Section 311 of the Code of criminal Procedure, 1973, for recalling of witness is allowed.

2. It is the contention of the learned counsel for the petitioner that respondent No.2 had filed complaint against the petitioner for the offences under Sections 498-A, 323, 504, 506 r.w. 34 of I.P.C.. The charge sheet has been filed against the petitioner under the above sections. The trial has already started. The respondent No.2 has examined herself as a witness. Other witnesses have also been examined. Thereafter, respondent No.2 filed an application for re-

examining herself under Section 311 of Cr.P.C. The said application is allowed, which is erroneous. Learned counsel further submitted that the grounds which are mentioned in the application for re-examining the respondent No.2 have already been covered in the evidence of respondent No.2. Hence, her re-examination is not required but this fact is not considered by the trial court. Hence, requested to allow the writ petition.

3. It is the contention of learned counsel for respondent No.2 that the petitioner and his family members demanded an amount of Rs.2,00,000/- as dowry from the respondent No.2 and they assaulted her. She was mentally and physically harassed by the petitioner and his family members. She was admitted in the hospital, as the respondent No.2 is illiterate lady, she could not depose the said fact when she was earlier examined, hence she wants to re-examine herself. No harm is going to be caused to the petitioner if respondent No.2 re-examines herself. Learned counsel further submitted that the petitioner can cross examine respondent No.2. The trial court has considered all these aspects and has passed the reasoned order which is legal and valid. Hence, he requested to dismiss the writ petition.

4. Learned A.P.P. submits that appropriate order be passed.

5. I have heard both the learned counsel. Perused the impugned order. The application under Section 311 of Cr.P.C. was filed by the respondent No.2 which is at Exh. A of the petition. The said application was filed on two grounds. First is that on 9.4.2013 accused persons beat the complainant/respondent No.2 and they were demanding Rs.2,00,000/- from her and another is that due to assault and harassment at the hands of the petitioner and his family members, the complainant fell ill and she was admitted in Sugar workers Hospital, Shrirampur for a period from 24.9.2013 to 28.9.2013. To prove her case the respondent No.2 wishes to re-examine herself. While allowing the application, the trial court has observed that there is no harm to be caused to the petitioner if the application is allowed as the petitioner will get a chance to cross examine respondent No.2. On that ground the trial court has allowed the application. I am unable to understand the observations of the trial court, as the grounds mentioned in the application have already been covered in the examination-in-chief of respondent No.2, recorded before the trial court. Moreover, respondent No.2 has examined P.W.7 Dr. Sharad Satpute in support of her contentions about her admission in the Hospital at Shrirampur. As both the grounds mentioned in the application by respondent No.2 have been covered, hence it is not necessary to re-examine the respondent

No.2 again. The re-examination cannot be permitted to fill up the lacuna. The respondent No.2 is allowed to examine any other witness in support of her case if she wishes. In view of the above, I pass the following order:-

O R D E R

- I. The writ petition is allowed.
- II. The impugned order dated 31.08.2023 passed below Exh.153 in R.C.C. No.81 of 2014 by the learned Judicial Magistrate, First Class, Shrirampur, is quashed and set aside.

(SHIVKUMAR DIGE, J.)

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