



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

104 CRIMINAL WRIT PETITION NO. 18 OF 2023

Pravin Bansidharrao Ikhe

VERSUS

1) Pooja W/o. Pravin Ikhe Patil

2) Shaurya Pravin Ikhe Patil

...

Advocate for the Petitioner : Mr. Shikrashna B. Solanke

Advocate for Respondents : Mr. R.V. Naiknavare

.....

CORAM : SHIVKUMAR DIGE, J.

DATED : 8th JULY, 2024.

PER COURT :-

1. By the present writ petition, the petitioner prays to quash and set aside the order dated 07.11.2022 passed by the learned Judge, Family Court, Osmanabad below Exh. 29 in Petition No. E-04 of 2021.

2. It is the contention of the learned counsel for the petitioner that the respondents had filed an application before the trial court for issuance of witness summons. The said application is allowed by the trial court without taking the say of the petitioner, which is erroneous. Learned counsel further submitted that earlier also an application for issuance of witness summons was allowed by the trial court and the said order was set aside by this Court, directing the trial court to consider the say of the petitioner. But in spite of that, the same error

has been committed by the trial court. Hence, requested to allow the writ petition.

3. It is the contention of the learned counsel for the respondents that it is a right of the respondents to examine the witness, hence the say of the petitioner is not required. The trial court has considered this fact and on that ground the application is allowed. Learned counsel further submitted that the respondents have filed an application under Section 125 of Cr.P.C. for getting maintenance and she wants to examine the witness in support of her case so the say of the petitioner is not required on the said application. The order of the trial court is legal and valid and no interference is warranted in it. Hence, requested to dismiss the writ petition.

4. I have heard learned counsel for both the parties. Perused the impugned order. It appears that the respondents had filed an application for issuance of witness summons. The matter is hotly contested between the petitioner and the respondents. The trial court should have taken say of the petitioner on the said application. However, without taking the say of the petitioner, the trial court has passed the impugned order, which is erroneous. Hence, interference is warranted in the impugned order and I pass the following order:-

O R D E R

- I. The writ petition is allowed.
- II. The impugned order dated 7.11.2022 passed below Exh.29 in Petition No.E-04 of 2021 by the learned Judge, Family Court, Osmanabad is quashed and set aside.
- III. The trial court is directed to take the say of the petitioner on application Exh.29 and decide the said application on its own merits.

(SHIVKUMAR DIGE, J.)

rlj/