



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1020 CRIMINAL WRIT PETITION NO. 1886 OF 2023

XYZ
VERSUS

The State of Maharashtra and others

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Advocate for the Petitioner : Mr. P. N. Kutti h/f Mrs. Chaitali R. Kutti

APP for Respondent No.1: Mr. S.B.Narwade

Advocate for Respondent Nos. 2 to 10 : Mr. A.R. Syed

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CORAM : SHIVKUMAR DIGE, J.
DATED : 24th SEPTEMBER, 2024.

PER COURT :-

1. Learned counsel for the petitioner submits that the relief claimed by the petitioner by way of prayer clauses "B" and "C" have become infructuous and now the petitioner is pressing the relief claimed as per prayer clause "E-1" to the extent of right to lead oral evidence of the informant, which is forfeited by the impugned order.

2. The petitioner has challenged the impugned order dated 16.12.2023 passed by the learned Additional Sessions Judge, Jalgaon below Exh.1 in Sessions Case No. 49 of 2016. By the said order the right of the informant to lead oral evidence has been forfeited.

3. It is contention of learned counsel for the petitioner that the

petitioner has filed complaint against respondent Nos. 2 to 10 under Sections 376(2)(m), 420, 452, 323, 504, 506 r.w. 34 of I.P.C. The petitioner is police constable and respondent No.2 is Police Sub Inspector. When the petitioner attended the dates of court proceedings, the learned Judge pressurized the informant-petitioner to settle the matter, as petitioner did not want to settle the matter she did not attend the court dates. Initially, learned Judge issued bailable warrant against petitioner, thereafter non bailable warrant was issued when the petitioner did not attend the court dates, the learned Judge has passed order of forfeiting oral evidence of the petitioner which is erroneous. Learned counsel further submitted that it is settled law that evidence in respect of cases against women and children cannot be forfeited. Learned counsel further submitted that the petitioner is ready to give evidence of witness as per the court dates if petition is allowed. The petitioner is victim and she has right to give evidence but it is forfeited by the impugned order, hence requested to allow the writ petition.

4. It is contention of learned counsel for respondent Nos. 2 to 10 that several chances were given to the petitioner to give evidence inspite of that the petitioner remained absent. The petitioner is police constable. She is aware about the procedure of the court proceedings. Initially, bailable warrant was issued against the

petitioner, which was served on her. Thereafter, non bailable warrant was issued against her. In spite of that she remained absent. Hence, learned Judge constrained to pass order of forfeiting the oral evidence of the petitioner. The order passed by the learned Sessions Judge is legal and valid and no interference is required in it and requested to dismiss the writ petition.

5. Learned A.P.P. submitted that appropriate order be passed.

6. I have heard all learned counsel. Perused the impugned order. The petitioner has filed complaint against respondent Nos. 2 to 10 under the above referred sections. The allegations against respondent No.2 are that he sexually assaulted the petitioner. Considering the nature of offence, the trial court should not have forfeited the evidence of the petitioner. The court should have waited till execution of non bailable warrant against the petitioner instead of forfeiting her evidence. Considering these facts, it is necessary to give fair opportunity to both the parties to lead evidence. Hence, I pass the following order:-

O R D E R

I. The writ petition is allowed in terms of prayer clause "E-1".

II. The order dated 16.12.2023 passed by the learned Additional Sessions Judge, Jalgaon below Exh.1 in Sessions Case No. 49 of 2016 to the extent of forfeiture of right of the petitioner to lead oral evidence is quashed and set aside.

III. The petitioner-informant shall remain present before the Additional Sessions Judge, Jalgaon and give her evidence on the dates fixed by the learned Additional Sessions Judge.

7. It is made clear that the trial court shall not get influenced by the observations made in this order and shall decided the case on merit.

(SHIVKUMAR DIGE, J.)

rlj/