

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4095 OF 2022

Manish Chandra Behari Kapoor

...Petitioner

Versus

Sona Manish Kapoor and Anr.

...Respondents

WITH

INTERIM APPLICATION (ST) NO. 15629 OF 2023

Sona Manish Kapoor

...Applicant

In the matter between

Manish Chandra Behari Kapoor

...Petitioner

Versus

Sona Manish Kapoor and Anr.

...Respondents

Mr. Abhijit Sarwate a/w. Ms. Hardev K. for the Petitioner.

Mr. Naveen Sharma for Respondent No.1.

Mr. Vishwajeet Sagare, APP for Respondent-State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 16th FEBRUARY, 2024

P. C. :

1. Heard Mr. Abhijit Sarwate, learned counsel for the Petitioner, Mr. Naveen Sharma, learned counsel for Respondent No.1 and Mr. Vishwajeet Sagare, learned APP for Respondent-State.

2. By this petition the challenge is to the order dated 8th August 2022 passed by the JMFC Court issuing the summons to the concerned

Authorities to produce the documents pertaining to the income of the petitioner husband.

3. Mr. Sarwate, learned counsel appearing for the petitioner points out that upon an Application filed by the wife seeking directions to the concerned Authorities to produce the documents pertaining to the income of the petitioner, the order dated 8th August 2022 came to be passed allowing the Application and thereafter the matter was adjourned to 19th September 2022. Pointing out to the Roznama of the Trial Court, he submits that on 13th September 2022 an application was made by the respondent wife to take the matter on board and Applications being Exhibit 139A and 140 were filed stating that the PAN number remained to be mentioned in the Application and giving the details. He submits that particulars of the branch of the Bank from which requisite record was sought was also tendered although the same did not form part of the Application filed under Order XI Rule 14 of CPC. He submits that the applications were filed without giving notice to the petitioner husband and immediately on next day i.e. on 14th September 2022 summons came to be issued to the Authorities. He submits that the matter does not rest here and in fact there has been tampering with the Court records inasmuch as in the Application for production of documents under Order XI Rule 14 of the CPC, the PAN Card Number of the petitioner was not

mentioned which was inserted subsequently which is evident from the handwritten sentence on last line of paragraph No.5 of the Application. He further submits that the same indicates that in absence of petitioner the Court has permitted Applications to be filed and has passed orders thereon. He further points out that in the affidavit in reply on behalf of respondent- wife there has been a complete denial to filing of any application for taking up the matter on board or for providing details for issuance of witness summons. He further points out that contradictory stands have been taken in the reply as regards the handwritten PAN number of the petitioner in the Application.

4. *Per contra*, learned counsel for respondent submits that the handwritten PAN card number on the Application was written at the time of tendering the Application to the Court. However subsequently the advocate was under the impression that said number is not mentioned and as such Application came to be filed. He further submits that only Pursis was filed and no Application was made.

5. Considered the submissions and perused the record.

6. For the purpose of ascertaining as to whether handwritten portion has been inserted in the Application subsequently, it is necessary to see the original Application which was filed by the respondent wife on 20th May 2022. Upon a query by this Court as to the copy of Application

which must have been served upon the learned counsel for the petitioner, Mr. Sarwate would submit that he does not have copy of the Application and what is on record is the certified copy. In view of this, it is not possible for this Court to consider as to whether the handwritten portion was inserted subsequently. As regards the objection to the production of the documents by issuing of summons, learned counsel for petitioner submits that the documents which are required to be considered for the purpose of D.V. proceedings is for the period 2014-2019 as post 2019-2022, the Family Court has considered and granted the maintenance.

7. Admittedly, at the time of hearing of the Application Exhibit 138 for production of the documents no reply was filed by the petitioner and as such objection which is now sought to be raised before this Court was not raised before the Trial Court. The Trial Court on the basis of Application has passed the order dated 8th August 2022 for the purpose of determination of the income of the parties issuance of summons to the concerned Authorities cannot be faulted with.

8. As regards the issue of Applications/Pursis being taken on record without notice to the defendant although in this case the same was for the purpose of giving better particulars it would have been prudent if the Court had directed notice to be issued to the petitioner husband so as to ensure that no orders are passed without notice to other party. Such

practice of allowing Applications to be taken on board and passing orders thereon however innocuous without notice to the other party is required to be deprecated. Be that as it may. The objection raised is that Application for maintenance was filed in the year 2014 and as such income at the relevant time have to be considered and income for the period 2019-2022 cannot be taken into consideration.

9. Considering that the summons has been issued to the concerned authorities for production of the documents to ascertain the income of the petitioner husband, at the time of arguments it will be open for the petitioner to contend that the said documents which are produced by the Authorities are not relevant for the purpose of deciding Application before the Domestic Violence proceedings.

10. Writ Petition stands disposed of in the above terms. Interim Application does not survive and is also disposed of.

(SHARMILA U. DESHMUKH, J.)