



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.1113 OF 2023

Vinod Narayan Gawli
Aged about 42 years, Occ: Agriculturist,
R/o Digdi (Dhanora), Tah. Mahur,
Dist. Nanded.

...**APPLICANT**

...V E R S U S...

Anusaya Vinod Gawli,
Aged about 35 years, Occ: Household,
R/o C/o Shriram Dattuji Marathe,
Jamb Road, Ramkrushna Nagar,
Mulki, Yavatmal, Tq.& Distt. Yavatmal.

...**NON-APPLICANT**

Shri M.N. Ali, Advocate for Applicant.
Shri M.V. Rai, Advocate for Non-applicant.

CORAM:- M.W. CHANDWANI, J.
DATED :- 20.02.2024

ORAL JUDGMENT:

. Heard. **Admit.**

2. The application challenges the order dated 21.07.2023 passed by the learned Judicial Magistrate First Class, Court No.7, Yavatmal in Criminal M. No.232 of 2018, whereby the objection of the non-applicant to contradict her earlier statement was upheld.

The facts necessary for disposal of the present application can be summarized as under:

3. The non-applicant has filed Criminal M. No.232 of 2018 against the applicant under the provisions of Protection of Women from Domestic Violence Act, 2005. The defence of the applicant is that the non-applicant lived in adultery with one Pramod Rathod. According to the applicant, he has filed the complaint with the Police Station, Mahur, District Nanded when she eloped with Pramod Rathod. In the said proceedings, the statement of the non-applicant was recorded. The applicant wanted to contradict the non-applicant by showing the said statement but due to objection raised by the non-applicant the learned trial Court did not allow the applicant to ask the question on her previous statement on the premise that section 145 of the Indian Evidence Act does not attract statements recorded by the police. Feeling aggrieved with the said impugned order, the present application came to be filed.

4. Heard learned counsel for the applicant as well as learned counsel for the non-applicant. I have gone through the record.

5. Section 145 of the Indian Evidence Act provides that the witness may be cross-examined as to previous statement,

which runs as under:

“145. Cross-examination as to previous statements in writing-- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

6. Bare perusal of the said provision makes it clear that it does not distinguish the statement made before the police or any other statement in writing rather it provides that if somebody wants to contradict any witness by writing i.e. his previous statement, it is mandatory that his attention must be drawn on the said the writing, particularly those parts of the said writing which are to be used for the purpose of contradicting him. The learned trial Court did not read section 145 in proper sense and erroneously upheld the objection raised by the counsel for the non-applicant. I also do not find force in the argument of the learned counsel for the non-applicant that when the statement is recorded under section 161 of the Cr.P.C. the witness can be contradicted to his earlier statement only in the proceedings in which the statement under section 161 is recorded. Therefore, the order of learned trial Court does not sustain and requires to be

quashed and set aside. Hence, the following order:

7. The application is allowed.
8. The impugned order dated 21.07.2023 in passed by the learned Judicial Magistrate First Class, Court No.7, Yavatmal in Criminal M. No.232 of 2018 is hereby set aside.
9. The applicant is permitted to contradict the non-applicant with her previous statement made by her through police.

With this, the application stands disposed of.

JUDGE

Wagh