IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 828 OF 2024

Juber Gafur Shaikh … **Petitioner**
Age 33 years, Occu: Service,
R/o Village Hasta Tq. Kannad
Dist. Aurangabad

VERSUS

1. The State of Maharashtra

2. Seema Juber Shaikh … **Respondents**
Age 32 years, Occu: Household,
R/o Plot No.25-26, Lane No.1,
Ganesh Colony, Aurangabad

Mr. Nilesh N. Bhagwat, Advocate for the Petitioner,
Mrs. A. S. Deshmukh, APP for Respondent No.1 State
Mr. Amol B. Chalak, Advocate for Respondent No.2

: Y. G. KHOBRAGADE, J.
: 17th January, 2025

JUDGMENT :-

1. **Rule.** Rule made returnable forthwith and heard finally with consent of both the sides.

2. Heard both sides at length. With the assistance of the learned counsel appearing for both sides, I have gone through the record.

3. By the present Petition, the petitioner invoked the

jurisdiction of this Court under Article 227 of the Constitution of India read with section 482 of the Criminal Procedure Code and takes exception to the order dated 15.04.2024 passed by the learned Judicial Magistrate First Class, Court No.3, Aurangabad below Exh. 122 and rejected prayer of the petitioner for recalling the order dated 15.02.2024 passed below Exh. 1 in PWDVA No. 516 of 2021.

4. It is not in dispute that, the present respondent No.2 wife initiated a proceeding under Section 12 of the Protection of Women from Domestic Violence Act. After filing of reply by the Petitioner, the matter was fixed for evidence. Accordingly, respondent No.2 wife filed her evidence affidavit and lead further evidence. After evidence of the respondent No. 2 is closed, the present petitioner/ husband has filed his evidence affidavit, however, failed to lead further evidence.

5. As per Roznama, on 15.02.2024, the learned trial Court passed the impugned order as under:

> "Despite repeatedly calling, respondent and his advocate has not turn up towards the court until 3.30 p.m. No application is given. Hence, evidence of the respondent is discarded and matter is put for argument."

6. Thereafter, on 29.02.2024, petitioner/husband (original non applicant) filed an application Exh. 122, and prayed for recalling of the order dated 15.02.2024 and seeking permission to lead evidence.

7. On 15.04.2024, the learned trial Court passed the impugned order holding that, the petitioner/original non applicant killing time on one or other ground. It is further observed that, on 15.02.2024, the petitioner/husband was present in the Court premises till 05.00 p.m., however, even after repeatedly called out, none appeared till 4.30 p.m., but thereafter the Petitioner appeared in the matter and stated that, his counsel is not available. Further, on enquiry about depositing arrears of interim maintenance, the petitioner/ husband flatly refused to deposit the arrears of maintenance amount. Therefore, considering conduct of the petitioner, the learned trial Court passed the impugned order and rejected the application for recalling the order dated 15.02.2024, which does not appear perverse.

8. However, in order to give fair opportunity of trial, one chance needs to be given to the petitioner to lead evidence by recalling the order dated 15.02.2024 passed below Exh.1 as well as order dated 15.04.2024 passed below Exh. 122, subject to

payment of cost of Rs.15,000/- payable by the Petitioner/ husband to the Respondent/ wife and depositing 50% of the maintenance amount before the trial Court on or before 14.02.2025. In view of discussion, I proceed to pass the following order:

ORDER

(i) The Order dated 15.02.2024 passed below Exh.1 as well as order dated 15.04.2024 passed below Exh. 122 in PWDVA No. 516 of 2021 by the learned Judicial Magistrate First Class, Court No.3, Aurangabad are hereby recalled and set aside subject to payment of cost of Rs.15,000/- payable by the Petitioner /husband to the Respondent/wife and on depositing 50% of the arrears of maintenance amount before the trial Court on or before 14.02.2025.

(ii) After deposit of the amount as directed above, the petitioner/husband shall appear before the learned trial court on 24.02.2025 and shall enter into witness box and the counsel for Respondent No.2 wife shall conduct further cross examination.

(iii) Accordingly, Criminal Writ Petition is disposed off. Rule is made absolute in the above terms.

(Y. G. KHOBRAGADE, J.)

JPChavan