



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1947 OF 2024

Manoj S/o Bhimrao Rajwade @ Undirwade,
Aged about 43 years, Occ.–Service,
Presently Residing at Flat No.B-707,
Eisha Erica, near DSK Vishwa Gate,
Dhayari, Pune 411041 and Permanent
R/o. Plot No.23, Giripunje Layout,
Near Chamat Hall, Kharbi,
Nagpur – 440034.

.... **PETITIONER**

// **VERSUS** //

Kalpna W/o Manoj Rajwade @ Undirwade,
(Maiden Name : Kalpana d/o Pramod Shahare)
Aged about 40 years, Occ.- Not known,
R/o. B-206, Bezonbagh, Jaripatka Road,
Nagpur 440004.

.... **RESPONDENT**

Mr. S. R. Bhongade, Advocate with Mr. Sachin Katarpawar,
Advocate for the Petitioner.
Mr. Ishant Tambi, Advocate for the Respondent.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 16th APRIL, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the learned Counsel appearing for the parties.

2. It appears that the Petitioner filed an application for grant of permission to re-examine the Petitioner to prove certain documents i.e. transcription of telephonic conversation with the Respondent. However, he has not placed the said relevant documents along with the application, on this count, the application came to be rejected. It also appears from the order that evidence of Petitioner recorded on 21.10.2022 and the cross examination of Petitioner also completed. Thereafter, the Petitioner examined PW-2 to PW-5 on 23.11.2023 and thereafter on 14.12.2023 the said application Exhibit-38 for grant of permission to recall the witness is filed. It is observed by the learned Family Court No.3, Nagpur that the Counsel for Petitioner was diligent enough in leading evidence from the side of Petitioner, therefore, his contention that due to oversight this aspect is remained to be brought on record cannot be accepted. The learned Family Court further observed that the Petitioner has filed this application deliberately after examining five witnesses. However, there is no basis for such observations and no benefit is gained to the Petitioner by not placing the same documents on record.

3. Learned Counsel for the Petitioner relied on ***Manju Devi Vs. State of Rajasthan & Anr.***, reported in ***(2019) 6 SCC 203***, wherein the Hon'ble Apex Court in para 10 held as under :

“10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone.”

4. Learned Counsel for the Petitioner also placed reliance on ***Zahira Habibullah Sheikh & Anr. Vs. State of Rujrat & Ors.***, reported in ***(2006) 3 SCC 374***, wherein the Hon'ble Apex Court in para 28 held as under :

“28. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court.”

5. Both the judgments relied by learned Counsel for the Petitioner are in respect of Section 311 of the Criminal Procedure Code, 1973 (Cr.P.C.). The learned Counsel for the Petitioner

submits that there is no any provision under the Family Court Act, 1984 of such recalling the witnesses. However, the provisions in Code of Civil Procedure, 1908 (CPC) i.e. Order 18 Rule 17 is akin to the provision under Section 311 of the Cr.PC.

6. As against this, the learned Counsel for the Respondent submitted that any such telephonic recording is not admissible as it infringement the “right of privacy” of the Respondent. He relied on judgment of the *High Court of Chhattisgarh, Bilaspur* passed in *Aasha Lata Soni W/o Shri Durgesh Soni Vs. Durgesh Soni S/o Shri Chhabilal Soni*, decided on 05.10.2023 and the judgment of *High Court of Punjab and Haryana at Chandigarh* passed in *Neha Vs. Vibhor Garg*, decided on 12.11.2021.

7. Learned Counsel for the Respondent also placed reliance on *Vadiraj Naggappa Vernekar (Dead) through LRs. Vs. Sharadchandra Prabhakar Gogate*, reported in *(2009) 4 SCC 410*, wherein the Hon’ble Apex Court held that, “Order 18, Rule 17 of the CPC is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Main purpose of Order 18 Rule 17 of the CPC is to enable Court to clarify any doubts that may have arisen during the course of his

examination. If the evidence on re-examination of a witness has bearing on the ultimate decision of the suit, trial Court may permit recall of such witness for re-examination-in-chief with permission to defendants to cross-examine the witness". In the present petition, only ground it appears that the Petitioner failed to submit the documents of which he is relying along with the application. As the evidence of the Petitioner is yet to conclude, the learned Judge of the Family Court, Nagpur considered the application afresh. The order passed on 15.01.2024 is liable to be set aside.

8. As such, the order dated 15.01.2024, passed below Exhibit-38 by the learned Judge, Family Court No.3, Nagpur in Petition No. A-1035/2022 is hereby quashed and set aside.

9. The Petitioner is permitted to place on record the call recordings transcribed by the Petitioner which he wants to rely on and which he wants to examine himself.

10. The learned Family Court No.3, Nagpur is directed to re-consider the application of the Petitioner and exercise its discretion in view of the citations relied by both the parties.

11. Accordingly, the parties to appear before the learned Family Court No.3, Nagpur on **29.04.2025**.

12. It is made clear that, the learned Family Court No.3, Nagpur consider the application on its own merit without being influenced by the observations made in this order.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak