



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

CRIMINAL WRIT PETITION No.909 OF 2024

(Tushar Shalikram Bhagat Vs. Ruplaxmi Tushar Bhagat and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms. Parita Lakhani h/f. Mr. M.P. Kariya, Advocate for petitioner.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 22nd JANUARY, 2025.

1. By this petition, the petitioner has challenged the order below Exhibit-1, passed by the Family Court No.1, Nagpur in Criminal M.A. No.56/2023, dated 26.9.2024.

2. Heard learned counsel for the petitioner. She submitted that the petitioner has filed application before the Family Court under Section 127 of the Criminal Procedure Code for cancellation of maintenance order or modification of the maintenance order under the changed in circumstance. After filing of the application on several occasions he has also adduced his evidence but his cross-examination was not conducted and the matter was adjourned on various occasions.

3. On 26.10.2023 though he was not present but his counsel was present before the Court. Thereafter, on 21.11.2023 he attended the proceeding but the cross-examination was partly completed and matter was adjourned on 22.12.2023. On that day, he remained absent, his counsel was also absent. On 5.3.2024 his counsel has attended the proceeding and finally

merely because the applicant was absent on one occasion the application was dismissed and being aggrieved with the same he has filed this petition. She further submitted that due to genuine reasons he could not present before the Court and on 9.9.2024, the matter was fixed for dismissal order and finally on 26.9.2024 the application was dismissed in default, as the petitioner and his counsel was absent. She submitted that as the petitioner is not doing any work, it is difficult for him to pay the maintenance amount. Thus, there are changed in circumstances and therefore that application is filed. Opportunity is to be granted to the present applicant to litigate his cause on its own merit and, therefore, matter be restored back. He had filed an application for restoration, but same was not considered by the Court and his application for restoration was rejected.

4. Though the respondents are served, none appears for the respondents.

5. Having heard learned counsel for the petitioner and considering the roznama which shows that on various occasions the petitioner has put his appearance but for one or the other reasons his cross-examination was not completed and on next two dates he remained absent and, therefore, matter came to be dismissed.

6. Considering the roznama, it appears that on some occasions he remained absent, but that itself is not sufficient to dismiss the application of the present applicant and the opportunity is to be granted to him to litigate his cause.

7. In the interest of justice the petition deserves to be

allowed and accordingly the order of dismissal deserves to be set aside. In view of that, I proceed to pass following order :

ORDER

- (i) Criminal Writ Petition is allowed.
- (ii) The order passed below Exhibit-1, by the Family Court No.1, Nagpur in Criminal M.A. No.56/2023 is hereby quashed and set aside.
- (iii) The matter is remanded back to the Family Court No.2, Nagpur.
- (iv) The parties shall remain present before the Family Court-2, Nagpur on 27th January 2025.
- (v) The Criminal Writ Petition is disposed of.

(URMILA JOSHI-PHALKE, J.)