



Cri. M.A. No. 64 of 2020
Sau. Humanaushin vs-
Humayu
MHYA050053302020

ORDER BELOW EXH. 128

(26.03.2025)

This is an application filed by the advocate for non-applicant to issue witness summons to *Mahila* Cell, Pusad.

02. The advocate for the applicant filed his say on the application itself and strongly resisted the application.

03. I heard advocate Shri. Arif Ahmed for non-applicant and advocate Shri. Y. H. Divekar for the applicant.

04. The advocate for non-applicant filed written argument (Exh. 145). The basic contention of advocate for non-applicant is that the applicant made different statements before *Mahila* Cell, Pusad. Therefore in order to prove that statements the non-applicant required to examine *Mahila* Cell, Pusad. In support of his claim he relied on case of **Jasdeep Kaur Chadha vs State (NCT Delhi) [Criminal Appeal No (S). 1405-1406 of 2007]**. He lastly prayed to allow the application.

05. On the other hand the basic contention of the advocate for applicant is that the application is not tenable. The non-applicant filed this application only to prolong the matter. Hence prayed to reject the

application.

06. On 08.01.2024 I passed an order below Exh. 38 which is an application for interim maintenance filed by the applicants. While deciding an application below Exh. 38 I have already assign reasons as to why the witness from *Mahila* Cell, Pusad cannot be called as witness.

07. On perusal of record it appears that the N.A. filed certified copy of decree of order of restitution of conjugal rights along with list Exh. 23 at Sr. No. 14. It is surprising that the N.A. in his reply (Exh.42) narrated the statement of the applicant no. 01 given to *Mahila* cell, Pusad. In fact, the proceeding before *Mahila* cell is confidential and it was nothing but an attempt to restitute the conjugal relations between the parties. Therefore, it is not expected to wholly rely on that statement and to reproduce it in the reply.

08. It is also surprising that the N.A. only highlight the portion of statement before *Mahila* cell, Pusad favorable to him. He tried to bring on record only the half-truth. Even on mere reading of statement given by applicant no. 01 before *Mahila* cell, Pusad one can understand as to why applicant no. 01 refused to reside with the N.A.? The Court never permitted him to examine any officer of Mahila Cell, Pusad to prove the statements made before them.

09. Apart from this, as per section 31 of the Indian Evidence Act,

admissions not conclusive proof, but may estop. Therefore, the admissions, even in judicial proceedings, are not conclusive proof and the N.A. tried to rely on the statement made before *Mahila* cell, Pusad. The statement before *Mahila* cell and the statement before mediator in mediation process are not admissions, hence, not relevant.

10. The non-applicant relied on the case of **Jasdeep Kaur Chadha (Cited Supra)**. In cited case Hon'ble Supreme Court held that, *"we observed that there was no bar to the previous statement being confronted to the witness even if such statement was made after investigation subject to the applicability of Section 145."* The provision of Section 145 of Indian Evidence Act is applicable to "previous statements" in "same proceedings". The proceeding before *Mahila* Cell, Pusad and this proceeding are different one. Hence section 145 of Evidence Act is not applicable in this case. Therefore the case law cited by the advocate for non-applicant is not helpful to him. Hence the application deserves to be rejected. In result I pass following order,

ORDER

Application (Exh. 128) is hereby rejected.

Place: Pusad
Date: 26.03.2025

(**Govind S. Varpe**)
Judicial Magistrate First Class,
Court No. 04, Pusad, Dist. Yavatmal

