

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 582 OF 2022**

1. Samir Kumar Alias Samir Kumar Das
2. Pramod Kumar Das
3. Sudhir Kumar Das
4. Jugnu Das
5. Subhash Chandra Das
6. Malarani Subhash Chandra Das
7. Anju Das

Petitioners

Versus

1. Sushma Samir Kumar
2. Sejal Samir Das
3. Snehal Samir Das
4. State of Maharashtra
5. Mrs. Thara Nair

Respondents

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Mr. Naveen Sharma, Advocate for the Petitioner.

Mr. Vikas Shivarkar, Advocate for Respondent No.1.

Mr. S. R. Agarkar, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATE : 30<sup>th</sup> SEPTEMBER, 2022**

**PC :**

1. The petitioners are challenging the order dated 04.01.2022 passed by learned JMFC, Pimpri, Pune below exhibit-13 rejecting the application preferred by petitioners seeking directions to advocate Smt. Thara Nair to withdraw her Vakalatnama from Criminal M.A. No.533 of 2021.

2. The petitioner No.1 was married to Respondent No.1. The respondent Nos.2 and 3 are their daughters. Petitioner No.2 to 7 are relatives of petitioner No.1. The respondent No.1 filed Criminal M. A. No. 533 of 2021 before the Court of learned JMFC, Pimpri, Pune under the Provisions of Domestic Violence Act. Respondent No.5 is the advocate by profession and she is representing to respondent Nos.1 to 3 in the aforesaid proceedings.

3. The petitioner No.1 filed application before the Court of learned JMFC, Pimpri, Pune in Criminal M.A. No.533 of 2021 seeking directions to be given to respondent No.5 to withdraw her Vakalatnama from the said proceedings. The grievance of the petitioner is that in the month April 2021 due to mental pressure by respondent No.1 herein to get mutual divorce from her, the petitioner met advocate (Respondent No.5) appearing for respondent No.1 upon her phone call. The said advocate had discussed with the petitioner No.1 about compromise/settlement and got all the information from him. Under the good faith, the petitioner No.1 had discussed and disclosed many things to advocate without realising that she would misuse the information given by him. It was further contended that the

said advocate cannot act on behalf of respondent No.1 herein. The petitioner No.1 had discussed about mutual consent divorce and reposed confidence towards representing respondent No.1. The said advocate cannot represent respondent No.1 and jeopardize the interest of petitioner No.1. It would amount to professional misconduct.

4. Learned JMFC, Pimpri, Pune vide order dated 04.01.2022 rejected the said application. While rejecting the said application it was observed that the parties have not filed any petition for divorce by mutual consent. Whether Petitioner No.1 had talked with advocate Smt. Thara Nair in respect of petition for mutual consent or not is matter of evidence. Rule 24 of Standards of Professional Conduct and Etiquette to be observed by advocate categorically states that the confidence reposed by the party in his advocate is material. Advocate Smt. Thara Nair had never acted as advocate for petitioner No.1. This is not a forum or proceeding where petitioner No.1 can agitate about his grievance. The Court leave it to the conscience of Smt. Thara Nair to consider whether to withdraw or continue to act for respondent No.1 herein in the

proceeding.

5. Learned advocate for the petitioner submitted that the respondent No.5 (advocate) cannot appear for respondent No.1 herein. The learned JMFC has committed an error in rejecting the application preferred by petitioner No.1. In April 2021, the petitioner had got mutual divorce from respondent No.1 and accordingly the petitioner met respondent No.5 in her office at Pune. She collected information from petitioner about his marital dispute with respondent No.1 which were shared by him in good faith with advocate Smt. Thara Nair (Respondent No.5). During discussion, he shared personal things personal information without realizing that the said information would be misused. Since, the petitioner No.1 did not agree with demand of respondent No.1, Criminal M. A. No. 533 of 2021 was filed by respondent No.1 on behalf of herself and two daughters on 13.05.2021. The trial Court has committed an error while passing impugned order. Appearance of respondent No.5 on behalf of respondent No.1 would cause prejudice to the petitioners. The trial Court has misread rule 24 of the Standards of Professional Conduct and Etiquette to be observed by advocate. The act also amount to professional misconduct.

6. Learned advocate for respondent submitted that there is no error in the impugned order. Learned Magistrate has rightly rejected the application. Respondent no.1 had never acted as advocate for petitioner No.1. Rule 24 as aforesaid cannot be applied against respondent No.5. There are three matrimonial disputes pending between petitioner and respondent No.1. Advocate Smt. Nair is representing respondent No.1 in all those proceedings. The petitioner is educated person and it cannot be believed that he disclosed unnecessary information to advocate for respondent No.1. The respondent No.5 did not surrender to the false tactics of the petitioners. The conversation between petitioner and the advocate was for re-settlement and co-habitation. The respondent No.1 has filed affidavit in reply giving details about the meeting with respondent No.5.

7. Apparently, the respondent No.1 on behalf of herself and respondent Nos. 2 and 3 had initiated the proceedings under the provisions of Protection of women from Domestic Violence Act on the ground as aforesaid. The petitioner No.1 had preferred an application before the Court of learned Magistrate seeking directions to the advocate/respondent

No.5 to withdraw her appearance from the proceedings. Learned Magistrate has rejected the application by assigning reasons. I do not find any infirmity in the impugned order. The petitioner No.1 was not the client of respondent No.5. Rule 24 refers to herein above cannot be applied against the respondent No.5. No case is made out for interfering with the impugned order. Hence, I pass the following order:-

**ORDER**

Criminal Writ Petition No. 582 of 2022 is rejected and disposed of accordingly.

**(PRAKASH D. NAIK, J.)**