



Judgment

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

CRIMINAL WRIT PETITION No. 503 OF 2026.

1.Smt. Leela w/o Bhaurao Gondhule,
Aged around 73 years, Occupation –
Housewife,

2.Hema d/o Bhaurao Gondhule,
Aged around 53 years, Occupation -
Housewife,

Both residents of Plot No.87, “Datta
Bhawan, Garoba maidan, Post Office
Bagadganj, Nagpur 440008.

... PETITIONERS.

VERSUS

Smt. Prachi w/o Deepak Gondule,
@ Prachi Gunjesh Zopade, Aged
about 37years, Occupation – Service,
Resident of c/o. Amarnath s/o Balaji
Narnaware, 192, Kukde Layout,
Nagpur-440027.

... RESPONDENT.

Mr. Sunil Manohar, Senior Advocate with Shri R.R. Deo,
Advocate for Petitioners.
Mr S.G. Malode, Advocate for the Respondent.

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CORAM : M.M. NERLIKAR, J.

DATE : AUGUST 05, 2026.

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith and by consent of learned Counsel for the parties, the matter is taken up for final disposal.

2. Challenge in this petition is made to the order dated 12.06.2026 passed below Exh.49 in Misc. Criminal Application No.885/2017 by the 6th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur, as well as issuance of summons by 14th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur dated 15.06.2026 to the Advocate who represented the petitioners in the mediation proceedings, which is issued pursuant to the above order.

3. The learned Senior Counsel appearing for petitioners
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submits that initially during the mediation proceedings certain proposals were exchanged between the Advocates for petitioners and the respondent, however, settlement could not be arrived between the parties. Thereafter, an application was moved by the present respondent under the provisions of Domestic Violence Act praying for return of the Streedhan. During pendency of this application, another application was moved by the respondent at Exh.49, seeking examination of Advocate who appeared for the petitioners before the Mediator. The said application came to be allowed by the impugned order, and the Court has directed to issue witness summons to the Advocate who represented the petitioners in the mediation proceedings, and accordingly summon was issued on 15.06.2026.

4. The learned Senior Counsel submits that the Advocate cannot be summoned to prove the exchange of proposals since the proposals were exchanged between the parties during the course of mediation which are confidential in nature and inadmissible. My attention is invited to the Alternative Dispute Resolution and Mediation Rules, 2006 (hereinafter referred as “**the 2006 Rules**”),

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more particularly Rule 20 which provides that the information as well as documents obtained during the mediation proceedings are confidential and inadmissible. It was submitted that if the same is allowed it would frustrate the very purpose of mediation proceedings. In such circumstances, it is submitted that Rule 20[4] specifically speaks about maintaining confidentiality in respect of events that transpired during mediation and same shall not be relied or introduced as information in any other proceedings. My attention is also invited to Rule 20[4][a] of the 2006 Rules which provides that the views expressed by a party in the course of the mediation proceedings are also required to be kept confidential and evidence cannot be led to that effect. He further submits that even the documents, notes, drafts or information given by the parties or mediators and admissions made by the parties during the course of mediation are confidential and inadmissible. In such circumstances, in order to maintain sanctity of the mediation proceedings it is necessary to maintain confidentiality and the Trial Court has committed gross error by passing the impugned order.

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5. The learned Senior Counsel has also invited my attention the Mediation Act, 2023 (hereinafter referred to as “**the 2023 Act**”), particularly Sections 22 and 23 thereof, and submits that even the confidentiality is to be maintained by the participants, he has emphasized on the word “participants” he submits that the definition of participants is provided under Section 3[r] of the 2023 Act wherein ‘Advocate’ is also included in the definition of ‘Participants’, and therefore, Advocate is also a part and parcel of the mediation proceedings. Further, Section 23 speaks about admissibility and privilege against disclosure which specifically states that no mediator or participant in the mediation, including experts, advisors or administrators shall ever be required or permitted to disclose in any court, tribunal, or in any adjudicatory proceedings, any communication during mediation. They also cannot reveal the contents or conditions of documents, conduct of parties or details of negotiations, offers or counter offers that came to their knowledge during the course of mediation. There are three exceptions laid down under Section 23[2] of the 2023 Act however, it was submitted that

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the present case does not fall in said exceptions. Thus, in order to maintain confidentiality as the exchange of proposals between Advocates during mediation proceeding is inadmissible, the Court below ought not to have ordered issuance of witness summons to the Advocate. He further submits that if the evidence of Advocate is permitted to be led, the petitioners will be affected and it would be against their interest, therefore, it is not permissible in law. In such circumstances, it is submitted that the order issuing summons and pursuant to said order the summons issued on 15.06.2026 is bad in law, and therefore, the petition needs to be allowed in terms of the prayers made in the petition.

6. The learned Senior Counsel has relied on the following judgments to submit that the Supreme Court has also considered the confidentiality and inadmissibility of the communications made during mediation proceedings-

- (1) **Arjab Jena @ Arjab Kumar Jena .vrs. Utsa Nena @ Pattnaik, Civil Appeal No. 151 of 2022.**
- (2) **Mayank Pathak .vrs. State (Government of NCT of Delhi) and another (2015) 11 SCC 798.**

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(3) **Perry Kansagra .vrs. Smriti Madan Kansagra (2019) 20 SCC 753.**

7. On the other hand, the learned Counsel appearing for the respondent has vehemently opposed the petition by submitting that the trial Court is right in passing the impugned order. He submits that there are exceptions to Rule 23 of the 2023 Act, and present case falls under the said exception, particularly Section 23(2)(b) since the information which is to be proved is relating to domestic violence, which cannot be said to be privileged or confidential. In order to prove certain facts, it is necessary to examine the Advocate who was appearing for the petitioners in the mediation proceedings. It was also submitted that the proposals which were exchanged between the parties were not submitted before the mediator, and as such did not form a part of the mediation proceedings. Therefore confidentiality would not apply to the said proposals. Under such circumstances, it was submitted that the Court below has rightly passed the order and the summons are rightly issued.

The learned Counsel for the respondent has also

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questioned the locus of petitioners to challenge the impugned order. According to him, the Advocate against whom summons is issued has not challenged the same, and therefore, the petition at the instance of petitioners is not maintainable.

8. I have considered the rival submissions canvassed by the learned Counsel for the parties. This Court vide order dated 25.10.2021 had referred the matter to the Mediator. Accordingly it appears from the record that mediation proceedings were undertaken, and during its pendency, proposals were exchanged between the Advocates of both parties. However, the said mediation proceedings could not be materialized.

9. Mediation, as part of Alternative Dispute Resolution (ADR), is a simple and effective way to settle disputes outside the courtroom. It allows parties to resolve conflicts with the help of a neutral mediator, avoiding long and costly litigation. One of its most important features is confidentiality, everything said or shared during

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mediation is protected and cannot be used later in court. This gives parties the freedom to speak openly, explore options honestly, and negotiate without fear of weakening their legal position. The process is also flexible and less formal, giving parties control over the outcome. It often leads to creative, mutually beneficial solutions that preserve relationships rather than damage them. The main objective of mediation is to encourage dialogue, uncover real interests, and promote compromise. Its purpose is to deliver fair resolutions quickly, empower individuals to shape their own agreements, and reduce the burden on courts. By combining efficiency, confidentiality, and cooperation, mediation contributes to social peace and embodies justice with compassion.

10. The question before this Court is – Whether an Advocate can be summoned to give evidence to disclose information received during the mediation proceedings ?

11. Before proceeding further, it would be necessary to deal

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with certain provisions, so far as the 2006 Rules are concerned, for deciding the present matter, Rule 20 is relevant, which reads as under :

“Rule 20: Confidentiality, disclosure and inadmissibility of information:

(1) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.

(2) When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.

(3) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regards to the oral information nor as to what transpired during the mediation.

(4) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:

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- (a) views expressed by a party in the course of the mediation proceedings;*
- (b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;*
- (c) proposals made or views expressed by the mediator;*
- (d) admission made by a party in the course of mediation proceedings;*
- (e) the fact that a party had or had not indicated willingness to accept a proposal;*
- (5) There shall be no stenographic or audio or video recording of the mediation proceedings.*
- (6) A Mediator may maintain personal record regarding dates fixed by him and the progress of the mediation for his personal use.”*

Further Sections 22, 3(r) and 23 of the 2023 Act are also necessary to decide the controversy, which read as under :

“22. Confidentiality.—(1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential all the following matters relating to the mediation proceedings, namely: —

- (i) acknowledgments, opinions, suggestions,*

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promises, proposals, apologies and admissions made during the mediation;

(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;

(iii) documents prepared solely for the conduct of mediation or in relation thereto;

(iv) any other mediation communication.

(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iv) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.

(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

Explanation.—For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, enforcement and challenge.

3[r] “Participants” means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;

*23.Admissibility and privilege against disclosure.—
(1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation:*

Provided that nothing in this section and section 22 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.

(2) There shall be no privilege or confidentiality that will attach to—

(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;

(b) information relating to domestic violence or child abuse; and

(c) statements made during a mediation showing a significant imminent threat to public health or safety.”

11. From perusal of above Act and Rules, it is crystal clear that the mediation proceedings are confidential. It is further clear that the communications as well as information in electronic form made during the mediation proceedings are privileged communications including contents or conditions of any document, nature or conduct of parties during mediation, content of negotiations, offers or counter offers, and no evidence can be led regarding those facts. The word ‘participants’ used in Section 22 is defined under Section 3(r) of the Act of 2023 which includes ‘Advocates’. Therefore, it is incumbent on the part of an Advocate also to maintain confidentiality of the proceedings, offers and proposals exchanged between the parties.

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Even the Court is barred from taking cognizance of the said fact. In the aforesaid background, Rule 20 of the 2006 Rules and Sections 22 and 23 of the 2023 Act, are salutary provisions which maintains integrity and purity and also works as a protective umbrella of the mediation proceedings. In this regard, the observations of the Apex Court in paragraph no, 27 in **Perry Kansagra (supra)** are relevant which read thus-

“27.It is true that the process of mediation is founded on the element of confidentiality. Qualitatively, mediation or conciliation stands on a completely different footing as against regular adjudicatory processes. Instead of an adversarial stand in adjudicatory proceedings, the idea of mediation is to resolve the dispute at a level which is amicable rather than adversarial. In the process, the parties may make statements which they otherwise would not have made while the matter was pending adjudication before a court of law. Such statements which are essentially made in order to see if there could be a settlement, ought not to be used against the maker of such statements in case at a later point the attempts at mediation completely fail. If the statements are allowed to be used at subsequent stages, the element of confidence which is essential for healthy mediation/conciliation would be completely lost. The element of confidentiality and the assurance that the

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statements would not be relied upon helps the parties bury the hatchet and move towards resolution of the disputes. The confidentiality is, thus, an important element mediation/conciliation.”

12. The learned Counsel for the respondent has also relied on Section 23(2)(b) of the 2023 Act, which carves out an exception to Section 23, wherein the information relating to domestic violence or child abuse, cannot be said to be confidential or privileged communication. I fail to understand how this exception would be applicable in the present case. Be that as it may, considering the above position of law and the provisions holding the field, I am of the opinion that the proposals exchanged between the Advocate of both the parties, are privileged communication, which cannot be disclosed and for that purpose to prove those facts, the Advocate cannot be called in a witness box. Allowing disclosure of what happens in mediation would defeat its very purpose. Mediation is meant to be a confidential and cooperative process where parties can speak openly, explore solutions, and negotiate without fear of those words being

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used against them later in court. If confidentiality were broken, participants would become cautious and less willing to compromise, which would undermine trust and honesty. Confidentiality is therefore not just a rule but the foundation of mediation without it, the process loses its effectiveness and the goal of reaching fair, amicable settlements cannot be achieved. Even the Supreme Court in the case of *Perry Kansagra (supra)*, has held that “*If the statements are allowed to be used at subsequent stages, the element of confidence which is essential for healthy mediation/conciliation would be completely lost.*” Considering the above position of law and fact, I am of the considered opinion that the learned trial Court has miserably failed to take into consideration the essence of mediation proceedings and further since the communications are privileged communication and confidential, same would be inadmissible. The learned trial Court has thus erred in passing the impugned order dated 12.06.2026 which automatically would also mean that summons issued to the Advocate for petitioners on 15.06.2026, cannot sustain in law therefore, for the reasons recorded above, the same are liable to

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be quashed and set aside.

13. So far as the contention of the learned Counsel for the respondent as regards locus of petitioners to file the petition, since the Advocate to whom the summons is issued has not challenged the order is concerned, it is to be noted that the Advocate against whom the summons is issued, represented petitioners in the mediation proceedings, and therefore petitioners have every locus to challenge the impugned order and action pursuant to said order, since the effect of the same would be against their interest and ultimately they are the aggrieved persons.

14. In view of the above discussion, I proceed to pass the following order.

ORDER

- [a] Criminal Writ Petition is allowed and disposed of.
- [b] The order passed by the 6th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate,

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Nagpur on 12.06.2026 below Exh.49 in Misc. Criminal Application No.885/2017, is quashed and set aside. Needless to mention that the summons issued on 15.06.2026 to the Advocate for petitioners is also quashed and set aside.

[c] Rule is made absolute in aforesaid terms.

JUDGE

Rgd.