

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CRIMINAL APPLICATION NO. 596 OF 2015

ANIS S/O MAINUDDIN SHAIKH (PATEL) & ORS
VERSUS
THE STATE OF MAHARASHTRA & ANR

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Advocate for Applicant : Mr. H. I. Pathan.
APP for Respondent No.1: Mr. S. A. Ambad.
Advocate for Respondent No.2: Mr. R. M. Deshpande.

CORAM: T. V. NALAWADE, J.
DATED: 25th JUNE, 2015.

PER COURT:

1. The proceeding is filed for quashing of the proceeding of M.A. No.159 of 2014 itself pending in the Court of Judicial Magistrate, First Class, Washi, District Osmanabad. The proceeding is filed by the Respondent under section 12, 18, 19, 20 and 22 of Protection of Women from Domestic Violence Act, 2005. Both the sides are heard.
2. Respondent is the wife of Petitioner No.1 and other Petitioners are relatives of Petitioner No.1. It is case of

the wife that Respondent No.1 has kept one keep and due to instigation of keep severe ill-treatment was given to her. The marriage took place in the 1998 and it is the case of the wife that she has two sons from present Petitioner No.1. It is her case that from about 4 months prior to filing of the proceeding ill-treatment was started to her.

3. It is the case of the wife that the husband and his relatives were asking her to bring Rs.1 Lakh from her parents as they wanted the amount for construction of their house. It is her case that her parents are poor and they could not meet this demand. It is contended that as the demand was not met with, she was left at the parent's house and the husband refused to accept her in the matrimonial house. It is her case that on 21st October, 2014 when she attempted to return to the house of husband, the husband and his relatives gave her severe beating and the husband said that he will never allow her to enter the matrimonial house. Since then she is living in the house of her parents with issues and the husband has not made any provision for their maintenance. It is her case that on 26th October, 2014

husband had come to the house of her parents with unknown persons and he tried to take away the two sons and he gave severe heating to her.

4. It is the case of the wife that the family of the husband owns at-least 5 Acres of irrigated land and they are taking crop of sugarcane, onion etc. It is her case that the annual income from the agricultural land is around Rs.5 Lakhs and the husband owns milch cattle also and the husband earns Rs.22,000/- per month by selling milk. In the proceeding, the wife prayed for monthly maintenance of Rs.6,000/- and she claimed more amounts for education, residence etc. The proceeding was filed on 30th October, 2014.

5. The husband did not file reply to the proceeding and he directly filed present proceeding in this Court. Learned counsel for the applicant submitted that the husband had given notice through post to the wife on 24th June, 2013 and he had asked her to return to matrimonial house but she did not return to the matrimonial house. It was submitted that the wife is saying that the husband should live in Pune and as husband refused to do so the wife left his company. It

was submitted by learned counsel that as the notice was given on 24th June, 2013 the case of the wife that she was driven out of the house about 3 months prior to the date of filing of the proceedings cannot be accepted.

6. The learned counsel for the husband placed reliance on order made by this Court at Principal Seat in **Criminal Application No.160 of 2011 [Sejal Dharmesh Ved V/s The State of Maharashtra and others]**. This Court has carefully gone through the facts of this case and case of **Criminal Writ Petition No.804 of 2014 [Vrushiket S/o Sadashiv Shinde and others V/s Pamabai W/o Vrushiket Shinde and another]**. The observations of this Court in Criminal Writ Petition No.804 of 2014 are as under:

*“8) Learned counsel for the petitioner placed reliance on a reported case **2014 ALL MR (Cri) 7636** Bombay High Court (**Sejal Dharmesh Ved V. The State of Maharashtra**). In this case this Court refused similar reliefs to a lady who was living in most of the time in United States when she had married with the opponent in 1999 and she had come just one year prior to the date of proceeding to India, in 2009. In view of the facts of that case, this Court held that there was no*

physical relationship, which had come to an end long back and as the proceeding was not filed within reasonable time to show that the relations would give her the cause of action to file proceeding under the D.V.Act, the relief was refused.

9) *As against this reported case, learned counsel for the original applicant placed reliance on a case reported as **(2014) 3 SCC 712 [Saraswathy V. Babu]**. The Apex Court has discussed the relevant terms and requirements for taking benefit of the provisions of the D.V.Act at paragraph 12 to 14. The observations are as under:-*

“12. Section 2 (g) of PWD Act, 2005 sates that “domestic violence” has the same meaning assigned to it in Section 3 of PWD Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 releates to “economic abuse” which includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household as evidence from clause (c) of Section 3 (iv).

13. In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in

the shared household matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term Domestic Violence as defined under Section 3 of the PWD Act, 2005.

14. The other issue that whether the conduct of the parties even prior to the commencement of the PWD Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in V.D.Bhanot V. Savita Bhanot (2012) 3 SCC 183. In the said case, this Court held as follows:

“12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Section 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even

if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.”

10) *It cannot be disputed that in view of the provisions of the D.V.Act, the wife is not expected to show that just before the filing of the proceeding she was subjected to domestic violence. This Court has observed in the case cited supra that proceeding needs to be filed within reasonable time from the cause of action but in view of the other reliefs which are made available and the observations made by the Apex Court particularly with regard to economic abuse which finds mention in Section 3, the definition of “domestic violence”, it can be said that the original applicant from the present proceeding has made out her case. She has turned old, she has no source of income but the husband is avoiding to provide anything for her maintenance and he is having sufficient property. It appears that he was Sarpanch of the village also.”*

7. In the present proceeding, the husband has not filed reply and the circumstance that he has sent the

notice through post cannot be considered in the proceeding like present one. It will be up to him to prove that he had really sent notice of which a copy is produced in this Court and the wife left his company on her own and that the contentions of the wife are not correct and true. All that will be the part of evidence and the learned J.M.F.C. will be required to consider the rival contentions. This Court holds that no case is made out for quashing of the proceeding itself. In the result, the application stands dismissed.

[T. V. NALAWADE, J.]

Dt.25/06/2015
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