

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 198 OF 2014

Heena Anjum w/o. Ruksar Shekh

....Applicant

Versus

Shaikh Ruksar Ahmed s/o. Shaikh
Nisar and Ors.

....Respondents.

Mr. A.U. Deshmukh, Advocate for applicant.

Mr. H.T. Gaikwad, Advocate for respondent Nos. 1 to 3.

CORAM : T.V. NALAWADE, J.

DATED : 8th July, 2015.

ORDER :

1. The petition is filed to challenge the judgment and order of Criminal Appeal No. 270/2012, which was pending in the Court of Additional Sessions Judge, Aurangabad. The appeal filed by present respondent, husband under the provision of Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as the 'Act' for short) is allowed by the Sessions Court and the order of maintenance and order of making payment of house rent made by the learned J.M.F.C. in favour of present petitioner is set aside. Both the sides are heard.

2. It is the case of petitioner that after the marriage,

illegal demand of Rs. five lakh was made by the husband and on that count, she was harassed. Allegations are made that the parents of the husband were instigating the husband to give illtreatment. Some allegations are made against father in law that he had evil eye on her. She has made allegations that ultimately on 2.2.2012 her son, who was aged about 3 months, was snatched away from her and she was driven away from matrimonial house. She had prayed for maintenance and other allowances. The learned Judicial Magistrate, First Class granted monthly maintenance at the rate of Rs. 2000/- to the wife and at the rate of Rs. 1000/- to the son. A direction was also given to pay Rs. 2000/- per month for her rent. In the appeal, the Sessions Court has held that domestic violence is not proved and there is sufficient material to infer that present petitioner had left the company of husband on her own and there was no domestic violence as such.

3. The learned counsel for petitioner placed reliance on the cases reported as **(2015) 5 Supreme Court Cases 705 [Shamima Farooqui Vs. Shahid Khan]** and **AIR 2014 SUPREME COURT 309 [Indra Sarma Vs. K.V. Sarma]**. In the second case, there is discussion about the rights given to the wife under the Act and it is observed that it is a human right

issue. In the first case, there is discussion about the object behind the provisions of section 125 of Criminal Procedure Code and there is also discussion about the approach which the Court should adopt while considering such case. There cannot be dispute over the propositions made by the Apex Court in these two cases cited supra. The facts and circumstances of each and every case are always different.

4. Applicant Smt. Heena examined herself to prove her contentions and the husband examined two witnesses including himself. He examined one Police Officer. The substantive evidence of the witnesses show that on 8.1.2012 when the wife was in the company of the husband and they were present in the market from the matrimonial place, the wife had left the company of husband and she had gone directly to places like Kannad, Dhule, Surat, Ahamdabad and then to Mumbai. She had reached Mumbai, according to her, on 10.1.2012 and then she had returned to Daulatabad on 12.1.2012. As the wife was missing, report was given by husband and police were searching for wife. In view of this report, after returning of Heena, her statement was recorded on 12.1.2012. It is duly proved in the evidence of Police Officer as Exh. 20. She has admitted her signature appearing on the statement.

5. There was no reason for police to create the record of aforesaid nature. On the other hand, the learned counsel for wife submitted that she was mentally disturbed, but that state of mind was due to conduct of the husband and his relatives. The facts stated by the wife in police statement dated 12.1.2012 is that she had left the company of husband on 8.1.2012 and evidence shows that there was no resumption of cohabitation after that day. In spite of these circumstances, she has made allegations against the husband in application under section 12 of the Act that on 2.2.2012 she was driven out of matrimonial house by husband and his relatives after snatching away her son from her custody. Thus, apparently false allegations of domestic violence are made of aforesaid nature in the proceeding. Even the statement dated 12.1.2012 shows that the child was not with her when she had left the company of the husband.

6. For getting the relief under the aforesaid special Act, domestic violence needs to be proved. The facts and circumstances of the present case are otherwise and atleast it appears that there is no explanation with wife in respect of aforesaid circumstances. Only because wife is living separate, inference cannot be drawn that there was domestic violence

from the husband. These circumstances are considered and appreciated by the learned Revisional Court. This record was not properly considered by the Court of J.M.F.C. This Court sees no reason to interfere in the order made by the Sessions Court in criminal appeal.

7. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/