

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 or Registrar's orders.	Office Coram,	Court's or Judge's orders.
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CRIMINAL WRIT PETITION NO.: 1277 OF 2014

RUBEENA BEGUM W/O SHAHABAJ QUAZI
VERSUS
SHAHABAJ QUAZI S/O ABDUL SATTAR QUAZI AND
OTHERS

WITH
APPLN/1929/2015
IN
REVN/130/2014

RUBEENA BEGUM SHAHABAJ QUAZI
VERSUS
SHAHABAJ QUAZI ABDUL SATTAR QUAZI

WITH
REVN/130/2014

SHAHABAJ QUAZI ABDUL SATTAR QUAZI
VERSUS
RUBEENA BEGUM SHAHABAJ QUAZI

Advocate for Petitioner : Mr. Imale Ramesh R. [Mr. V. R. Jain, Advocate h/f Mr. Magre S. G. in Revision No. 130 of 2014].

APP for Respondent No.5 : Mr. S. A. Ambad.

Advocate for Respondent Nos.1 to 4 : Mr. S. G. Magare

CORAM: T. V. NALAWADE, J.
DATED: 16th JUNE, 2015.

PER COURT:

1. The proceedings, Criminal Writ Petition No.1277 of 2014 and Criminal Application No.130 of 2014 are filed to challenge judgment and order delivered in Criminal Appeal No. 239 of 2011 by learned Additional Sessions Judge, Aurangabad. The Appeal was filed by the husband to challenge the order made by learned Judicial Magistrate, First Class, Aurangabad under the provisions of Protection of Women from Domestic Violence Act, 2005. The learned Magistrate has directed the husband to pay monthly maintenance of Rs.5,000/-, to pay Rs.2,000/- per month as a rent for accommodation and a direction is given to pay Rs.5,000/- as compensation in respect of the physical and mental harassment to which the wife was subjected. The costs of Rs.1,000/- is also imposed on the husband. The Sessions Court has reduced the monthly maintenance amount and rent amount by fifty per cent. In view of these circumstances both the sides have challenged the decision. Criminal Application no. 1929 of 2015 is filed by the wife for giving direction to the husband to pay the arrears of amount and Rs.3,500/- as interim alimony till the decision of the revision. Both the sides are heard.

2. The proceeding was filed by wife under the provisions of sections 12, 18 (d), 18 (f), 191 (f), 20, 20 (1)(d) and 22 of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as “Domestic Violence Act”, for short]. It is the case of the wife that her parents had borne the expenses of the marriage and they had gifted many household articles to the husband in the marriage. It is the case of wife, even before the marriage the husband's father had taken Rs.5 Lakh from the father of the wife by contending that the amount was required for foreign education of his son. It is contended that after the marriage when the father of the husband became sick, more amount was taken from the father of the wife for the medical expenses. However, the father of the husband died during treatment.

3. It is the case of the wife that the husband is in business of computer etc. and he used to give harassment to compel the wife to bring money from her father for making investment in the business. It is contended that he used to quarrel on this ground and other petty counts. It is contended that the husband has suspicion about her character and he used to keep watch on her and for that he

used to stay in the house for most of the time of the day. It is her case that husband was abusing her and he used to give beating to her. It is her case that when she was pregnant, her abortion was caused by husband by giving some powder to her. It is her case that the husband and the relatives are believing in one Tantrik and they act as per his advise. It is her case that they had compelled her to tie one Tiet and they used to confine her. It is contended that as per the advise given by the said Tantrik abortion was caused by the husband.

4. It is the case of the wife that on 5th February, 2011 she called her parents as beating was given to her and threats were given to her. It is her case that she was ultimately driven out of the matrimonial house after snatching all her ornaments by her husband. It is her case that the husband has not made any provision for residence and maintenance and she is living at the mercy of her parents in the house of her father. It is her case that she has no source of income.

5. It is the case of the wife that the husband is in business and his monthly income is more than Rs.35,000/-. It is her case that all her ornaments are with her husband. It is

her case that she requires at least Rs.15,000/- per month for her maintenance and she requires amount for rent as she wants to live separate from her father. It is the case of the wife that the husband was already married and he was having issues from his first wife and this fact was concealed from her.

6. Husband filed reply and denied the aforesaid allegations. It is the case of the husband that he had married with other lady in the past but he had obtained divorce from her and Khulanama was shown by him to the father of the present applicant. It is his case that the wife was not ready to cohabit with him with the family of his father and she was insisting that he should live separate. It is case of the husband that when he refused to do so, the wife started picking up quarrels and making false allegations against him. It is his case that during dispute, the intervention of Darulqaza Amarat-E-Sharia, Marathwada, Aurangabad was sought and compromise was arrived at but the wife did not follow the terms of the compromise. It is his case that she left his company by leaving behind a chit and so she is not entitled to any maintenance. It is his case that he has no source of income and the wife is in position to make earning

for her livelihood.

7. Before Judicial Magistrate, First Class, the wife examined herself and she examined one witness. The husband has given evidence in rebuttal. The evidence of the wife is consistent with the aforesaid allegations made by her. The learned Judicial Magistrate, First Class, observed that her evidence is not shattered during cross examination and there is no reason to disbelieve her. The husband produced one chit purportedly written by the wife but the chit was not proved. The husband admitted that there used to be quarrels between him and wife. The husband did not give any evidence of his business and the wife could not produce any record of business of the husband. The learned Judicial Magistrate, First Class held that there was sufficient material to hold that the wife was subjected to domestic violence and the order was made accordingly.

8. The learned Additional Sessions Judge has observed that the wife has failed to prove that husband is in a position to give monthly maintenance of Rs.5,000/- and the amount of Rs.2,000/- for rent. The learned Additional Sessions Judge has considered one admission given during evidence of the

wife that the husband is not doing anything much-less the business. In view of these circumstances the maintenance amount and the rent amount is reduced by fifty per cent.

9. The submissions made by the learned counsel for the wife in this Court and the record do not show that the wife has anything to show that the husband is in a position to give Rs.7,000/- per month to the wife for maintenance and rent. Though both the Courts below have not observed anything about income of the husband, it can be said that in the year 2011 when the matter was filed even a labour was in a position to earn more than Rs.4,000/- per month. The circumstance that the husband had a wife and he married second wife shows that he must be making sufficient income and he must be having some source of income. Though the evidence shows that he is educated upto 12th standard, a person can do a business and a businessman definitely get more income than labour. His income must be more than Rs.6,000/- per month. He has tried to show that there is Khulanama. In view of this, this Court holds that the husband is in a position to give Rs.3,500/- per month to the wife. Such amount is given by learned Additional Sessions Judge to the wife. This Court sees no reason to interfere in the decision

given by the learned Additional Sessions judge. Considering the scope of these proceedings, this Court holds that there is no case made out for interference.

10. In the result, Criminal Writ Petition No.1277 of 2014 and Criminal Revision Application No.130 of 2014 filed to challenge the decision of learned Additional Sessions judge are dismissed. As the third proceeding [Criminal Application No.1929 of 2015] is outcome of the decision given by the learned Additional Sessions, the third proceeding is also disposed of.

[T. V. NALAWADE, J.]

Dt.16/06/2015
ans/1277