

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

CRI. REVISION APPLICATION NO. 453 OF 2014

Ajay Shivcharan Shah

... Appellant/Applicant.

V/s.

Suman Ajay Shah & Ors.

... Respondents.

Mr. Y. R. Dube, Advocate for the Appellant / Applicant.

Mrs. N.R. Prabhusalgaonkar, Advocate for Respondent No.1.

Smt. A. A. Mane, APP for the State.

CORAM : M.L.TAHALIYANI, J.

DATE : 06th JULY, 2015

P.C. :

1 Heard. Admit.

2 By consent of the parties, heard finally.

3 This revision application challenges the order passed by the learned additional Sessions Judge in appeal against the order of the learned Magistrate passed under section 12 of the Protection of Women From Domestic Violence Act, 2005.

4 Respondent no.1 is the wife of the applicant. The applicant was directed to pay monthly maintenance of Rs. 30,000/- per month from the date of petition to the respondent no.1 and he was further directed to pay Rs.5,000/- by way of

costs of the petition filed by respondent no.1 u/s. 12 of the Protection of Women From Domestic Violence Act.

5 The applicant moved the Sessions Court by way appeal. The appellate court, after hearing both the sides, modified the order passed by the learned Magistrate and reduced the monthly maintenance of Rs.30,000/- to Rs.20,000/-. The learned counsel Mr. Dube for the applicant has submitted that the learned Magistrate has come to the conclusion that there was no domestic violence on the part of the applicant. It was brought to my notice that the learned appellate Court had also not given any definite finding as to how the applicant had caused any domestic violence to the respondent no.1. The appellate court in its order has noted that since the applicant and the respondent no.1 are staying separately it is more than sufficient to come to the conclusion that the respondent no.1 had been subjected to domestic violence.

6 After having gone through both the judgments, I have no hesitation to come to the conclusion that the evidence on record has not been properly appreciated by the learned Magistrate and in fact he has not framed the proper issues / points. Therefore, the judgment of the learned Magistrate has become directionless. The first issue could have been 'whether the applicant is an aggrieved party'. The second issued could

be 'whether she was subjected to domestic violence' and then there should be further issue 'as to whether she was entitled to monetary or other reliefs as provided under the Act'. Unless such issues are framed and the evidence is properly appreciated by the trial court, the judgment is bound to be directionless.

7 In these circumstances, I set aside the judgment / order of the learned Magistrate as well as the order of the appellate court and I direct that the matter be remanded back to the learned Magistrate for deciding the application of respondent no.1 afresh without recording any fresh evidence. The application shall be decided on the basis of the evidence already on record but after framing proper issues/points for determination. Each and every issues shall be answered separately.

8 An order shall be passed after giving fresh hearing to the learned counsel for the applicant and respondent no. 1. Parties are directed to appear before the Magistrate on 23rd July, 2015.

9 This revision application stands disposed of in the above terms.

(JUDGE)

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