

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.431 OF 2015

Smt. Asma Anis Ahmed Ansari. ...Applicant.

vs.

Anis Ahmed Khalil Ahmed Ansari and ors. ..Respondents.

Mr.S.R.Gaud for the Applicant.

Mr.S.M.Shaikh for Respondent Nos,. 1 to 4.

Smt.Anamika Malhotra, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 17th March, 2016

P.C.

By the present revision the applicant has questioned the correctness, legality and the propriety of the orders passed by the Additional Chief Metropolitan Magistrate 46th Court, Mumbai dated 14.8.2014 below Exh.P-25 in CC No. 19/N/2012 and the judgment and order passed by the Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay dated 27.8.2015 in Criminal Appeal No.937/2014 thereby confirming the order passed by the learned Additional Chief Metropolitan Magistrate, 46th Court, Mumbai dated 14.8.2014 below Exh.P-25.

2) The brief facts giving rise to the present revision application are that, the petitioner is the legally wedded wife of respondent No.1. The marriage between the petitioner and respondent No.1 was solemnized on 11.8.2007 as per the Islamic

rites and customs at Mumbra, District Thane. As there were matrimonial disputes between the petitioner and respondent No.1 and it is the allegation of the petitioner that respondent No.1 caused her mental torture and harassment, the applicant filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 bearing CC No.19/N/2012 in the Court of Additional Chief Metropolitan Magistrate 46th Court, Mazgaon, Mumbai. On 23.1.2012, the applicant also filed an application as contemplated under Section 23 of the said Act for interim reliefs below Exh.4 in the said main application.

3) The learned Magistrate after hearing the parties to the said application partly allowed the said application below Exh.4 by its order dated 18.2.2012. The learned Magistrate by its order dated 18.2.2012 passed an order of restraint against the respondents from committing act of domestic violence. The learned Magistrate also directed respondent No.1 to secure same level of alternate accommodation like the present matrimonial home to the applicant and her children forthwith or to pay the rent of same level standard house within the vicinity of Byculla locality. The Magistrate further directed respondent No.1 to pay Rs.7500/- per month towards the maintenance of the applicant and her children from the date of filing of the said application i.e. from 23.1.2012 till further orders (emphasis supplied).

4) As the respondent No.1 did not comply with the order dated 18.2.2012 passed by the learned Magistrate, the applicant preferred an application as contemplated under Section 25 of the said Act for modification of the order dated 18.2.2012. The applicant

has categorically stated in the said application that respondent No.1 also owns one additional residential premises apart from the matrimonial house and therefore, she prayed that she may be allowed to stay at Room NO.9, 2nd floor, Suryaji buildingg, Agripada, Mumbai 400 011 or in the alternative respondent No.1 may be directed to pay Rs.20,000/- per month towards the rent of another alternate room since the date of filing of the main application by way of modifying the interim order dated 18.2.2012. The said application was filed below Exh.P-25 in CC No.19/N/2012. The learned Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai allowed the said application and directed the respondent No.1 to allow the applicant to stay in Room No.9 at Suryaji building, 2nd floor, Tank Pakhadi Street, Agripada, Byculla and if respondent No.1 was not intending to allow the applicant to reside in the said room along with her son then respondent No.1 to pay Rs.10,000/- per month as rent, from the date of the said order dated 14.8.2014 (emphasis supplied.) As the learned Magistrate while modifying the earlier order dated 18.2.2012 directed respondent No.1 to pay rent from the date of the said order i.e. from 14.8.2014, being aggrieved by the same the applicant preferred an appeal against the said order dated 14.8.2014 in the Court of Sessions, Greater Bombay bearing Criminal Appeal No.937/2014. The learned Additional Sessions Judge, Greater Bombay dismissed the said appeal by its Judgment and order dated 27.8.2015 and confirmed the order dated 14.8.2014 passed by the learned Magistrate.

5) Heard the learned counsel for the applicant and the learned counsel for respondent Nos 1 to 5 and also perused the

entire record annexed to the present application.

6) The learned counsel for the applicant submitted that while modifying the order dated 18.2.2012 the learned Magistrate ought not have modified the date for grant of monetary compensation. He further submitted that by the first order dated 18.2.2012 the Magistrate had granted compensation from the date of filing of the said application and the said date ought not have been modified by the concerned Magistrate in an application for modification of the said relief thereby directing the respondent No.1 to pay house rent from the date of passing of the modified order i.e. from 14.8.2014. He submitted that as a matter of fact in the application filed below Exh.P-25 it was never pleaded by the applicant and in the absence of such pleading, the Magistrate ought not have modified the earlier order to the detriment of the interest of the applicant. In support of his contention he relied on the decision of the Supreme Court in the case of **Jaiminiben Vyas and anr. vs. Hirenghai Vyas and anr. (2015) 2 SCC 385**. He therefore, prayed that the order passed by the Magistrate dated 14.8.2014 may be quashed and set aside to the extent to which it has held that “from the date of this order” i.e. from 14.8.2014. He submitted that rest of the part of the said order has been accepted by the applicant. He further submitted that if need arises, his client is entitled to file further application for modification of the earlier order as contemplated under Section 25 of the said Act.

7) The learned counsel for the respondents submitted that the applicant has filed the application for modification on 15.6.2012 and did not move the same for its adjudication for a period of 2

years thereafter. He further submitted that though his client had filed say to the said application, the applicant did not take any steps for its hearing and now after a lapse of about 3 years if the respondent No.1 is directed to pay from the date of filing of the main application, it will be a great financial burden on his client. As far as the date from which the said rent should be allowed i.e. from the date of filing of the main application or from the date of passing of the modified order i.e. from 14.8.2014 is concerned, he submitted that the date as has been directed by the modified order date 14.8.2014 is correct and proper date mentioned by the Magistrate. He lastly prayed that the present Revision Application may be rejected.

8) I have perused both the orders. It is to be noted here that while passing the modified order dated 14.8.2014 the learned Magistrate has not given any reason as to what prevailed upon it to direct that the rent be given from the date of passing of the said order when as a matter of record the earlier order dated 18.2.2012 which was in force clearly stipulates that the maintenance and the rent be given from the date of filing of the said application i.e. from 23.1.2012. The Supreme Court in the case of Jaiminiben (supra) has held that it is neither proper nor desirable that a court simply states that maintenance should be paid from either date of order or date of application in matters of maintenance. It is further held that, the purpose of the provision is to prevent vagrancy and destitution in society and the court must apply its mind to the options having regard to the facts of the particular case. It appears to me that while passing the order dated 18.2.2012 passed below Exh.4 the learned

Magistrate after taking into consideration various aspects had ordered that the amount be paid from the date of filing of the main application i.e. 23.1.2012 till further orders. In the order under challenge the Magistrate has not given any reason as to why the rent and or the amount of rent be paid from the date of the said order i.e. from 14.8.2014.

9) As per the record the applicant was granted maintenance and other benefits from the date of filing the main application i.e. 23.1.2012. While modifying the order below Exh.P-25 the Magistrate has practically reviewed its earlier order thereby directing that amount of rent to be paid from 14.8.2014 which is in contradiction of the earlier order dated 18.2.2012. The order dated 18.2.2012 appears to be well reasoned order thereby directing respondent No.1 to pay maintenance or the other amounts from the date of filing of the main application i.e. from 23.1.2012. In view of the above, I find that the directions of the learned Magistrate that amount of rent be paid to the applicant by respondent No.1 from the date of passing of the said order i.e. 14/8/2014 is not justified and tenable and the said order is hereby quashed and set aside to the extent to which it directs that amount be paid from the date of the said order i.e. from 14.8.2014. It is held that the directions given by the Magistrate by its order dated 18.2.2012 that the said maintenance and other amounts be paid from the date of filing of the application i.e. 23.1.2012 is proper and correct. Respondent No.1 is therefore hereby directed to pay amount of rent or in the alternate to pay rent at the rate of Rs.10,000/-p.m. from the date of filing of the application i.e. from 23.1.2012 till the further orders as may be passed by the Magistrate

in CC NO.19/N/2012.

10) As the application under Section 12 of the said Act is pending on the file of learned Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai since 23.1.2012, the concerned Magistrate is hereby directed to expedite the hearing of the said complaint/application.

11) Revision is allowed in the aforesaid terms.

(A.S. GADKARI, J.)