

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.623 OF 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
--	---------------------------

Mr. Ganesh Bhujbal for the Applicant.

Mr. Deepak Thakare, APP. for the State.

Smt.Vrushali Raje with K.T.Hiwrale for Respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 14th March, 2016

PC:

The applicant-husband has preferred the present revision impugning the Judgment and Order dated 17.11.2015 passed by the Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.874/2014 in C.C.No.85/Misc./2013. By the impugned order, the Appellate Court had directed the applicant herein to pay maintenance of Rs.5000/- per month to respondent No.1 from the date of filing of the interim application before the Trial Court and the applicant was granted three months time to deposit the arrears of maintenance. The Appellate Court has also directed the applicant to continue to pay maintenance of Rs.5000/- per month till the disposal of the main application pending on the file of 25th Court, Mazgaon at Swree, Mumbai in CC No.85/M/2013.

2) The Applicant and Respondent No.1 got married at

Mumbai on 24.190.2009 according to Sunni Muslim Law by solemnization of Nikah ceremony. That, due to matrimonial discord the Respondent No.1 started residing separately from 27.7.2011. The applicant caused domestic violence to respondent No.1 as contemplated under the provisions of Protection of Women from Domestic Violence Act. The respondent No.1 filed an application under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 in the Court of Metropolitan Magistrate, 25th Court, Mazgaon, (Sewree), Mumbai. The respondent No.1 in the said application prayed for various reliefs including the relief of maintenance for an amount of Rs.50,000/-per month for food, clothes, medicines and household expenses and other basic necessities. The respondent No.1 also filed an application for interim relief as contemplated under Section 23 of the said Act.

3) The applicant herein filed his detailed reply to the interim maintenance application filed by the Respondent No.1. In the said reply it was contended by the applicant that he was doing the job in the travel agency by name Anjum Travel Agency situated at Office No.3, Sagar Tower, Gr. Floor, Opp. 24 Karat Cinema, Aqsa Masjid Road, Cross to S.V.Road, Jogeshwari(W), Mumbai 400 012 and earning a salary of Rs.5000/- per month. He further contended that the respondent is doing the job of a teacher and is earning Rs.15,000/- per month and therefore, respondent No.1 is capable to maintain herself and the demand of respondent No.1 for maintenance was made only with a view to harass the applicant.

4) The learned Trial Court rejected the said application by its order dated 4.9.2014 passed below Exh.1A. The learned Trial

Court has held that it was not inclined to accept contentions of respondent No.1 as gospel truth and after going through the averments made in the application it was of the view that the disputes between the parties have arisen due to suspicion on the character of the respondent No.1 herein and that the respondent No.1 has failed to prove prima facie case of domestic violence in the said application. The respondent No.1 feeling dissatisfied by the same preferred appeal in the Court of Sessions for Greater Bombay bearing Criminal Appeal No.874/2014. The Appellate Court after taking into consideration the documents available on record was pleased to partly allow the said appeal thereby directing the applicant herein to pay maintenance at the rate of Rs.5000/-p.m. till the disposal of the main application.

5) The learned counsel for the applicant submitted that as a matter of fact after respondent No.1 left the matrimonial house, he gave her Talaq on 6.12.2012. He further submitted that in his reply before the Trial Court he has categorically stated that he is earning Rs.5000/-p.m. and therefore, payment of monthly maintenance of Rs.5000/- to the respondent beyond his reach. He submitted that the Appellate Court has not taken into consideration the said aspect and has proceeded on the footing that as the applicant has not denied the contention of respondent No.1 that he is earning Rs.3.00 lacs per month in his scrap business, the Appellate Court has accepted it and also granted monthly rent of Rs.3000/- to respondent No.1 from the date of the said order. He therefore, prayed to quash and set aside the said impugned order.

The learned counsel appearing for respondent No.1

vehemently opposed the application and supported the order passed by the Appellate Court. She submitted that the Trial Court has committed an error in rejecting the interim application thereby holding that domestic violence does not exist. She further submitted that as far as Talaqnama is concerned according to her it was unilateral act of the applicant with a view to shrug off the marital responsibilities. That there are no witnesses to the said Talaq and according to her the said document dated 6.12.2012 is a got up document. She submitted that the Certificate dated 14.10.2014 issued by Anjum Travel Agency is also a got up document as the owner of the said travel agency is the friend of the applicant. She contended that the respondent No.1 has not yet received an opportunity to cross examine the said witness and therefore, the Appellate Court was right in not relying upon the said document. She lastly prayed that present application may be dismissed.

5) I have perused the documents annexed to the present application. It appears to me that there is substance in the contention of the learned counsel for respondent No.1. The main application preferred by respondent No.1 is pending for final adjudication. The applicant has preferred the present revision against the inter-locutory order passed under Section 23 of the said Act. It is a matter of fact that the applicant has not denied the contention of respondent No.1 that he is earning Rs.3.00 lacs per month from his business of scrap. It will not be appropriate to comment on the documents that is the certificate issued by the Proprietor of Anjum Travel Agency and the alleged Talaqnama dated 6.12.2012 at this stage as the witnesses who have issued the said

documents are yet to be examined. The Appellate Court while granting the said interim relief has taken into consideration the various aspects of the case. Prima facie, I am of the opinion that the domestic violence at the behest of the applicant does exist and the view taken by the Appellate Court is just, right and proper in view of the facts and circumstances of the present case. I find that there is no error either of law or on facts in the Judgment dated 17.11.2015 passed by the Additional Sessions Court, Greater Mumbai.

6) The revision application being sans of any merits, is accordingly dismissed.

(A.S. GADKARI, J.)