

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition NO. 536 OF 2017

Anil Gopal Bhatia

...Petitioner

Versus

The State Of Maharashtra

And Anr

...Respondents

....

Mr.H.H. Nagi i/b. H.H. Nagi & Asso. for the Petitioner.

Mr.Raju M. Yamgar, Advocate for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 17th APRIL, 2017

P.C.

1. Heard Mr.H.H. Nagi, learned counsel for the petitioner and Mr.Raju Yamgar, learned counsel for respondent No.2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 8.12.2016 passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Appeal No.33/2014. By that order, the learned trial Judge partly allowed the appeal preferred by respondent No.2-wife and modified the judgment and order dated 13.12.2013 passed by the learned Metropolitan Magistrate,

27th Court, Mulund, Mumbai below Exhibit-38 in C.C. No.250/N/2011. The learned Sessions Judge directed the petitioner to pay rent of Rs.17,000/- per month instead of Rs.7,000/- as ordered by the trial Court from the date of 21.8.2013 till disposal of the main application.

3. In support of this Petition Mr. Nagi invited my attention to application dated 29.8.2013 made by respondent No.2 as also the leave and licence agreement dated 24.12.2012 between Mr. Ramesh Sreedharan and Mrs. Shanti R. Balchandani. He submitted that Mrs. Shanti R. Balchandani is the mother of the second respondent. He submitted that the mother and brother of respondent No.2 are permanent residents of Delhi. Respondent No.2 wants to reside with her mother and brother. Her mother has taken a huge flat on rental basis and respondent No.2 is claiming amount spent on her mother and brother from the petitioner. The petitioner is not under legal duty and/or obligation to secure accommodation for the mother and brother of the second respondent. In any case, respondent No.2's mother is paying monthly compensation of Rs.21,000/-. The petitioner is ready and willing to pay 50% of that amount i.e. Rs.10,500/-. He submitted that without recording any

reasons, the learned Sessions Judge has enhanced the amount from Rs.7,000/- awarded by the learned Magistrate to Rs.17,000/-. He further submitted that as respondent No.2 had left the matrimonial home on her own volition even otherwise she is not entitled to claim amount under Section 19(1)(f) of the Protection of Women from Domestic Violence Act, 2005 (for short, 'Act'). He, therefore, submitted that the petition requires consideration.

4. On the other hand, Mr.Yamgar supported the impugned order. He submitted that on 19.3.2011, respondent No.2 was compelled to leave the matrimonial home. Immediately within three months she instituted proceedings for restitution of conjugal rights on 14.6.2011. The petitioner has thereafter instituted the petition seeking divorce some time in September, 2011. He submitted that before filing present application Exhibit-38, respondent No.2 filed application Exhibit-26 seeking permission to reside in matrimonial home, namely, flat No.331, Tower No.6, Soham Park, Hari Om Nagar, Mulund (East), Mumbai. By order dated 20.3.2013, the learned Magistrate directed respondents No.1 to 3 therein not to commit any domestic violence under Section 18 of the Act to respondent

No.2-wife residing in the shared household. However, when respondent No.2 went to reside in the shared household, she was beaten up and, therefore, she filed complaint. Respondent No.2 thereafter filed application Exhibit-38. In paragraph-5 of that application, respondent No.2 has disclosed execution of agreement dated 24.12.2012 between Mr. Ramesh Sreedharan and Mrs. Shanti R. Balchandani. He submitted that respondent No.2 did not suppress this fact from the Court. Prior to that respondent No.2 had entered into two agreements of leave and license. He submitted that respondent No.2's mother and brother are permanent residents of Delhi. Respondent No.2 is looking after her minor daughter and with a view to helping her, the mother some times visits Mumbai. He submitted that respondent No.2 is co-owner along with the petitioner, his father and mother. He submitted that for the reasons recorded in paragraphs-12 and 13 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Section 19 of the Act deals with

residence orders. Section 19(1)(f) of the Act reads thus :

“19. Residence orders.-- (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order--

(a) XXXXXXX

(b) XXXXXXX

(c) XXXXXXX

(d) XXXXXXX

(e) XXXXXXX

(f) directing the respondent **to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same**, if the circumstances so require;”

(emphasis supplied)

6. A perusal of paragraph-12 of the impugned order shows that the learned Sessions Judge observed that it is not in dispute that the petitioner is residing in a luxurious flat having the amenities of gym and swimming pool. As per case of the husband himself, the maintenance charges of the flat are Rs.6,000/- per month. This fact indicates that how luxurious the residence of the husband is. Respondent No.2, being wife, is entitled to similar type of residence. She was residing in a house fetching the rent of Rs.17,000/-. The wife and the daughter are entitled to get Rs.17,000/-. Instead of that, the

learned Magistrate granted Rs.7,000/- only. Once the order of residence is passed to secure same level of accommodation, the whole rent was to be paid by the husband and there is no need for making the proportionate of the rent by granting half of the amount of total amount.

7. For the reasons recorded in paragraph-12 of the impugned order, I do not find that the learned Sessions Judge has committed any error in passing the impugned order. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Liberty is reserved to the parties to apply for expeditious disposal of the proceedings. If such an application is made, the learned Judge seized of the matter will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)