

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 744 OF 2017
Narendra B, Khade vs. Mrs. Pratiksha N.Khade and ors.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Prakash Jain for the Applicant.

Mr. P.P.Shukla with Vijay Jha for the Respondent.

Mr. A. R.Kapadnis, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 6th April, 2018

P.C.

1. This is an application under Section 407 of the Code of Criminal Procedure for transfer of Misc. Application No.57/2017 pending on the file of Judicial Magistrate First Class, Srivardhan, District Raigad to the Court of Metropolitan Magistrate at Vikhroli, Mumbai and Criminal Misc. Application No.150/2017 from the Court of Sessions at Mangaon, District Raigad to the Court of Sessions at Mumbai.

2. Heard the learned counsel for the applicant and the

learned counsel for respondent Nos. 1 and 2 at length. Perused the record.

3. The applicant is the husband of respondent No.1 and father of respondent No.2.

The admitted facts on record are that, the respondent Nos. 1 and 2 have filed application bearing Criminal Misc. Application No.57/2017 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short the said Act) before the Judicial Magistrate First Class at Srivardhan, District Raigad for various reliefs and more particularly mentioned in the said application. Respondent Nos. 1 and 2 also filed an application below Exhibit 5 for interim reliefs as contemplated under Section 23 of the said Act. The learned Magistrate by its Order 20.7.2017 was pleased to allow the said application and granted interim maintenance to respondent Nos. 1 and 2 at the rate of Rs.5000/-p.m. and Rs.15,000/-including educational expenses respectively and also directed the applicant to pay a sum of Rs.5000/- for acquiring residence and/or towards charges for residence to them.

While preferring the said application below Exhibit-5 it was averred by the respondent No.1 that for acquiring residence on rent at Mumbai, she required to pay rent at the rate of Rs.15,000/-p.m. The learned Magistrate after taking into consideration the evidence available on record was pleased to grant Rs.5000/- per month towards the expenses for payment of rent of residential premises at Mumbai.

The evidence on record clearly reveals that, respondent No.1 has acquired a premises for her residence being Room No.1/6, Sukh Sagar Society, Konkan Nagar, J. M. Road, Bhandup (W), Mumbai-78 admeasuring 230sq.ft. from Janardhan Rajam by executing a Notarized Leave and Licence agreement in the month of May 2017(5.5.2017).Thus, it is apparently clear that Respondent No.1 has acquired a residential premises on leave and licence basis at Bhandup, Mumbai and is residing therein.

4. The Misc. Application No.150/2017 is filed by the applicant for condonation of delay in an appeal challenging the said order dated 20.7.2017 passed by the learned

Judicial Magistrate First Class, Srivardhan and the same is pending for final adjudication before the Additional Sessions Judge, Mangaon, District Raigad.

5. The learned counsel for respondent Nos. 1 and 2 submitted that respondent No.1 has acquired the said premises on leave and licence basis with a view to facilitate respondent No.2 to pursue her education at Mumbai. He further submitted that, as a matter of fact, respondent No.1 is residing at Srivardhan along with her aged mother and respondent No.2 i.e. daughter of respondent No.1 is residing at Bhandup, Mumbai under the parentage of her brother and other relatives. He further submitted that if the case is transferred to Mumbai, it will be very difficult for respondent No.1 to travel from Srivardhan to Mumbai on every occasion and therefore, the present application may not be allowed.

6. As noted herein above, the record clearly reveals that, respondent No.1 is residing at the aforestated address at Bhandup, Mumbai and it appears that the said proceedings under Section 12 of the Domestic Violence Act

is filed at Srivardhan with a view to harass the applicant. As the respondent No.1 has acquired the said premises on leave and licence basis at Bhandup, Mumbai for her residence it will not cause any inconvenience or hardship to her in attending the Court of Metropolitan Magistrate at Vikhroli from Bhandup so also the Court of Sessions at Mumbai if the said proceedings bearing Misc. Application No.57/2017 and Misc. Application No.150/2017 are transferred from Srivardhan and Mangaon respectively to Mumbai.

7. In view of the peculiar facts and circumstances of the present case, the application deserves to be allowed.

Hence, the following order.

a) Criminal Misc. Application No.57/2017 pending on the file of Judicial Magistrate First Class, Srivardhan, District Raigad is hereby transferred to the Court of Metropolitan Magistrate at Vikhroli, Mumbai. The Judicial Magistrate First Class Srivardhan, District Raigad is directed to transmit the papers of the said case to the Court of Metropolitan Magistrate, Vikhroli, Mumbai within a

period of three weeks from the date of this order by following due procedure.

b) The proceedings i.e. Criminal Misc. Application No.150/2017 filed in the concerned appeal is also transferred from the Court of additional Sessions Judge, Mangaon, District Raigad to the Court of Sessions at Mumbai.

The learned Additional Sessions Judge, Mangaon, District Raigad is hereby directed to transmit the papers of the said case i.e. Misc. Application No.150/2017 to the Court of Sessions at Mumbai within a period of three weeks from the date of receipt of the present order by following due procedure

c) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)