

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3019 OF 2019

RISHAD DARAYAS COOPER)...PETITIONER

V/s.

NAHIDA RISHAD COOPER AND ANOTHER)...RESPONDENTS

Mr.Sanjay Bhojwani, Advocate for the Petitioner.

Ms.Tauban Irani a/w. Ms.Sachi Lodha, Advocate for Respondent No.1.

Mr.Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 11th OCTOBER 2019

ORAL JUDGMENT :

1 Heard. Rule. Heard finally by consent of parties.

2 By this petition, the petitioner/husband is praying for following principal reliefs :

- “i) This Hon’ble Court may be pleased to quash the order dated 04.10.2017 issuing notice to the petitioner and the order dated 11.04.2019 challenging the maintainability of the Criminal M.A.No.173/DV/2017 proceedings, pending on the file of the learned Magistrate, the Hon’ble 71st Court, Bandra, titled Nahida Rishad Cooper vs. Rishad Darayas Cooper.

In the alternate should this Hon’ble Court be pleased not to grant relief in terms of Prayer Clause (i)

- ii) This Hon’ble Court may be pleased to direct the transfer of the Criminal M.A.No.173/DV/2017 titled – Nahida Rishad Cooper vs. Rishad Darayas Cooper, pending on the file of the Learned Metropolitan Magistrate, the Hon’ble 71st Court, Bandra, Mumbai to the Hon’ble Principal District Judge, Pune, being the Hon’ble Parsi District Matrimonial Court, Pune.”

3 The learned counsel for the petitioner/husband drew my attention to the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Domestic Violence Act for the sake of brevity) which is pending on the file of the learned Metropolitan Magistrate, Bandra Court, Mumbai, being registered as Criminal Miscellaneous Application No.173/DV/2017 filed by the respondent/wife. The reliefs claimed therein are then compared by the learned counsel for the petitioner/husband with the reliefs claimed by the respondent/ wife in Parsi Suit No.8 of 2017. With this, it is argued that virtually same prayers are made in two proceedings by the respondent/wife and this amounts to abuse of the process of court. Therefore, in submission of the learned counsel for the petitioner/husband, the proceedings under Section 12 of the Domestic Violence Act initiated by the respondent/wife need to be quashed. The learned counsel for the petitioner/husband further argued that now proceedings in Parsi Suit No.8 of 2017 are transferred to the file of Pune District Matrimonial Court under orders of this court.

4 It is further argued that Appeal No.374 of 2017 came to be filed challenging the order passed in Parsi Suit No.8 of 2017 and the learned Division Bench of this court had taken cognizance of conduct of the respondent/wife in that appeal, by observing thus, in paragraph 26 of the judgment dated 6th December 2017 passed in that appeal :

“26 We find that instead of contesting the question of custody of Marc in Pune Court wherein the suit was filed earlier in point of time, Nahida filed the present suit before this Court in which one of the prayers is also in respect of the custody of Marc. We find some force in the submissions of Mr.Bhojwani that this amounts to abuse of the process of law. He has also invited our attention to the fact that Nahida has now filed a complaint under the Domestic Violence Act before the Metropolitan Magistrate, 21st Court, Bandra, Mumbai, wherein, again, the question of Marc’s custody has been raised. We are not going into the

propriety or the right of Nahida to file such proceeding. In our view, filing of the said proceedings in a way reflects upon the conduct of Nahida. In our view, the said situation could have been surely avoided. Mr.Bhojwani has stated that Mark's admission is still intact in Bishop's School at Pune and that Rishad has paid the terms fees."

5 The learned counsel for the petitioner/husband then referred to the Civil Suit bearing no.10 of 2017 filed by the petitioner/husband before the Parsi District Matrimonial Court at Pune for dissolution of marriage between the parties as well as for custody of the only son. It is further argued that earlier transfer application being Miscellaneous Civil Application (ST) No.11133 of 2017 filed by the respondent/wife for transfer of Parsi Suit No.10 of 2017 from Pune to Mumbai came to be rejected by this court on 9th June 2017 and the respondent/wife is granted an amount of Rs.1500/- per date for attending the court at Pune. With this, it is argued that identical reliefs are claimed by the

respondent/wife from two courts. It is further argued that the parties are still residing at Pune and the court at Pune can grant same relief, as is being prayed in the proceedings under Section 12 of the Domestic Violence Act. The learned counsel primarily submitted that filing of the proceedings under Section 12 of the Domestic Violence Act amounts to abuse of the process of court, in view of claiming similar reliefs in Parsi Suit No.8 of 2017 which is now being transferred to Pune, under orders of this court.

6 The learned counsel appearing for the respondent/wife submitted that under orders of this court, the petitioner/husband is restrained from relying on observations contained in paragraph 26 of the judgment. She further argued that relief of transfer of Domestic Violence Act proceedings cannot be granted in the instant proceeding and provisions of Section 407 of the Code of Criminal Procedure are not invoked by the petitioner/husband. She pointed out provisions of Section 24 of the Code of Civil Procedure.

7 I have considered the submissions so advanced and
perused the material placed before me.

8 At this juncture, it is apposite to quote Section 36 of
the Domestic Violence Act. It reads thus :

“36 **Act not in derogation of any other law -**

The provisions of this Act shall be in addition to,
and not in derogation of the provisions of any other
law, for the time being in force.”

Bare perusal of provisions of Section 36 of the Domestic Violence Act makes it clear that provisions of Domestic Violence Act are in addition to not and not in derogation to any other law. In the era of human rights of gender equality, the dignity of a woman is unquestionable and the same is recognized in Articles 14, 15 and 21 of the Constitution. The provisions of the Domestic Violence Act are meant for protection as well as welfare of a woman and therefore, merely because in some other proceedings, similar relief is sought, the proceedings under Section 12 of the Domestic Violence Act cannot be quashed and set aside. At this juncture, it

is apposite to note proviso clause to Section 12 of the Domestic Violence Act which makes it clear that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under the Domestic Violence Act shall be set off against the amount payable under such decree. In this view of the matter, when it is not disputed that the application is demonstrating instances of domestic violence, the proceedings under Section 12 of the Domestic Violence Act cannot be quashed.

9 Now let us consider the alternate prayer made by the petitioner/husband in the instant proceedings, which are titled as the petition under Articles 226 and 227 of the Constitution of India. The petitioner/husband is seeking transfer of pending domestic violence proceedings from the file of the learned Metropolitan Magistrate, Bandra Court, Mumbai, to the court of the Principal District and Sessions Judge, Pune, which is also Parsi District Matrimonial Court. Civil Suit No.10 of 2017 instituted by

the petitioner/husband is pending before the said court. Undisputedly, Parsi Suit No.8 of 2017 instituted at the instance of the respondent/wife is also directed to be transferred to the Parsi District Matrimonial Court at Pune. It is pointed out by the learned counsel for the petitioner/husband that parties, as of today, are residing at Pune. In this view of the matter, for general convenience of the parties, it is apposite to transfer Criminal M.A.No.173/DV/2017, between the parties, pending on the file of learned Metropolitan Magistrate, Bandra Court, Mumbai, to the court of Sessions Judge, Pune which is seized with the matrimonial matters between the parties in the capacity as the Parsi District Matrimonial Court. Therefore, the order :

ORDER

- i) The petition is partly allowed by making the rule absolute in terms of Prayer Clause (ii) by directing transfer of Criminal M.A.No.173/DV/2017, between the parties, pending on the file of the learned Metropolitan Magistrate, Bandra Court, Mumbai, to the court of Principal District and Sessions

Judge, Pune, where in exercise of the Parsi Marriage and Divorce Act, 1936, suits instituted by the parties are pending.

- ii) Needless to mention that pending appeal before the Sessions Court at Mumbai shall not be affected by this order.
- iii) All contentions of the parties are kept open.

(A. M. BADAR, J.)