

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3398 OF 2017

Mohammad Zuber Farooqi]
Age- 40 years, Occu- Service]
Pleasant Grove Blvd,]
Roseville, USA,]
Avadh Hospital, Mohalla Turakpatti]
Po Khairabad]
Dist. Sitapur, UP.]...Petitioner

Versus

1. State of Maharashtra]
Through Public Prosecutor,]
High Court, Mumbai.]
Taluka Karad, Dist. Satara.]
]
2. Neelima Akhtar]
Age- 34 years, Occu- Housewife]
Mahindra Spendours,]
LalBhadur Marg,]
Bhandup, Mumbai 078.]...Respondents

WITH
CRIMINAL APPLICATION NO. 226 OF 2019
IN
CRIMINAL WRIT PETITION NO. 3398 OF 2017

Neelima Akhtar]...Applicant
Versus
Mohammad Zuber Farooqi & Anr.]...Respondents

APPEARANCES-

Mr. Prashant Pandey a/w. Adv. Vijayalaxmi Shetty, Mr. Darshit Jain
and Mr. Irfan Unwala i/b. Mr. M.A. Khan for the Petitioner.
Ms. Shaheen for Respondent No. 2.
Mrs. G.P. Mulekar, APP for Respondent-State.

CORAM : S. S. SHINDE, J
DATE : 25th SEPTEMBER 2019



JUDGMENT

1. Rule. Rule made returnable forthwith, with the consent of parties matter is heard and disposed of finally at the stage of admission.

2. It is the case of the Petitioner that, on 26.12.2008, the Petitioner and Respondent married in Lucknow as per Muslim law. On 10.01.2009 the Respondent No. 2 migrated to North Carolina, USA with the Petitioner. In the year 2012, the Petitioner and Respondent No. 2 shifted to California. On 13.09.2013, Respondent No. 2 gave birth to male child i.e. Zayan Farooqi. On 19.08.2014 Respondent No. 2 left Petitioner's home in USA and went to her brother's place in Columbus, Indiana USA. On 13.09.2014 and 14.09.2014, the Petitioner and Respondent No. 2 met at public place in Columbus. On the very same date, the Petitioner filed divorce and child custody petition in the Superior Court in California. In between 14.01.2015 to 20.01.2015 several attempts were made by the California Superior Court to serve the summons to Respondent No. 2, but she deliberately evaded service. On 21.01.2015, Respondent No. 2 came to India and resided in Meerut. On 06.05.2015, the Petitioner gave divorce to Respondent in India. In July 2016, Respondent No. 2 filed permanent Custody Petition in Family Court, Bandra. In September 2016, the lawyer of Respondent No. 2 claimed that an email was received from the Petitioner's lawyer in USA. On 15.10.2016, Respondent No. 2 filed an FIR.

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It is further the case of the Petitioner that, on 02.11.2016, the Superior Court of California passed the custody order of the child in the Petitioner's favour. On 18.11.2016, the warrant of arrest was served by California Superior Court to Respondent No. 2.

On 21.11.2016, Respondent No. 2 filed a Domestic Violence case under Section 12 of Protection of Women from Domestic Violence Act, 2005 (herein after for sake of brevity will be referred as 'said Act') before the learned Metropolitan Magistrate Court, Mulund. The Metropolitan Magistrate, Mulund passed the maintenance order on 18.03.2017. On 23.06.2017, the Sessions Court dismissed the Criminal Appeal filed by Petitioner.

3. Learned counsel appearing for the Petitioner submits that, there was more than two years delay in filing the complaint by Respondent No. 2 before the learned Magistrate's Court. When there was delay, on the said ground alone, the Magistrate ought to have dismissed the complaint. In support of aforesaid contention, learned counsel appearing for the Petitioner relied upon the exposition in the case of *Trilochan Singh Vs. Manpreet Kaur & Anr*¹, *Santosh Kumar Yadav & Anr. Vs. State of UP & Anr*², *Seja Dharmesh Ved Vs. State of Maharashtra*³, *Inderjeet Singh Ghrewal Vs. State of Punjab & Anr*⁴, *Arun Vyas Vs. Anita Vyas*⁵.

¹ Misc. Single No. 4177/2012.

² 2015 SCC online ALL 8656.

³ Criminal Appeal No. 160/2011.

⁴ (2011) 12 SCC 588.

⁵ (1999) 4 SCC 690.

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4. It is further submitted that, the learned Magistrate has no jurisdiction to entertain the complaint, since the alleged domestic violence is not committed in India. It is submitted that, the stay of Respondent No. 2 in Mumbai is temporary, and therefore, learned Magistrate has no jurisdiction to entertain the complaint. The allegations that, Petitioner forced Respondent No. 2 to discontinue her Masters program and told her to join the Petitioner in California, and she was made to work hard in pregnancy are false allegations. The Petitioner has obtained order for custody of Zayan i.e. son of Petitioner and Respondent No. 2, from the Superior Court of California. Respondent No. 2 carried her jewelery with her to Columbus, Indiana. The order of American Court cannot be executed in India. Learned counsel invites attention of this Court to the averments in the application and grounds taken therein and submits that, the order passed by the Metropolitan Magistrate 53rd Court at Mulund, Mumbai and also Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, which are impugned in this petition are deserves to be quashed and set aside.

5. On the other hand learned counsel appearing for Respondent No. 2 relying upon the affidavit in reply made following submissions:-

a) Respondent No. 2 is dependent upon the Petitioner who is gainfully employed with the Government of United States of America and must shouldered the responsibility of the wife as per standard of living.

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b) Respondent No. 2 is residing at Mumbai with her brother, and therefore, she has instituted proceedings before Magistrate's Court at Mumbai. The Petitioner is probably drawing salary more than One Lac USD. Learned counsel invites attention of this Court to the averments in the reply so as to point out how the amount of Rs.30,000/- is inadequate in view of the fact that, she has to pay rent of Rs. 24,000/- per month to the house owner. It is submitted that, the Petitioner was constantly threatening the Respondent No. 2 that he will take divorce. Learned counsel invites attention of this Court to the averment in Paragraph 4 of affidavit in reply and submits that, the alleged harassment and threats given by the Petitioner are stated in the said paragraph. It is submitted that on 13.01.2015 when Respondent No. 2 asked the Petitioner about renewal of visa, the Petitioner flatly refused for such renewal. It is submitted that, the Hon'ble Supreme Court in the case of Nikita Versus Yadwinder Singh & Ors, Criminal Appeal No. 1096 of 2019 arising out of SLP (Criminal) No. 10566 of 2018 held that, at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.

c) Learned counsel invites attention of this Court to the findings

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recorded by both the Courts below. It is submitted that, in spite of undertaking given before the High Court that, the Petitioner will deposit entire amount towards arrears of maintenance, the Petitioner even till date has not deposited more than 60% of the total amount of arrears towards maintenance. Therefore, learned counsel submits that, petition may be rejected.

6. Heard learned counsel appearing for the Petitioner and learned counsel appearing for Respondent No. 2. With their able assistance perused pleadings and grounds taken in the petition, annexures thereto and reply filed by Respondent No. 2. The Hon'ble Supreme Court in the case of *Nikita* (supra), relying upon the earlier judgment of Hon'ble Supreme Court in the case of *Rupali Devi Vs. State of Uttar Pradesh & Ors.*, 2019 (6) SCALE 96 and in particular Para 16 thereof held that, the Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.

7. Respondent No. 2 has stated in the affidavit that, she is residing with her brother at Mumbai. The said aspect has been considered by the Sessions Court. In the light of judgment of Hon'ble Supreme Court in the *Bhagyawant*

aforesaid case, and also observations made by both the Courts below, there is no substance in the contention of learned counsel for the Petitioner that, Magistrate's Court at Mumbai has no jurisdiction to entertain the complaint.

8. So far question of limitation for filing the proceedings under Section 12 is concerned, the Hon'ble Supreme Court in the case of *Krishna Bhattacharjee Versus Sarathi Choudhary And Another*, (2016) 2 SCC 705 held that regard being had to concept of "continuing offence" and demands made by wife, application made by appellant wife under Section 12, 2005 Act after about 2 yrs of judicial separation, not barred by limitation.

9. It is true that, the learned counsel appearing for the Petitioner has relied upon the judgment of Bombay High Court so also other High Courts. However, in the list of judgments submitted, the judgment of Hon'ble Supreme Court pronounced in the year 2016, in the case of *Krishna Bhattacharjee* (supra) would hold the field. In that view of the matter, there is no substance in the contention of learned counsel for the Petitioner that, there was inordinate delay in filing the complaint.

10. So far alleged harassment is concerned, both the Courts below have made *prima facie* observations about the said alleged harassment. Since the order passed by the learned Magistrate directing the Petitioner to pay *Bhagyawant*

interim maintenance is an interim order and since the proceedings pending before the Magistrate are still pending wherein the Petitioner will have opportunity to contest the said proceedings, it may not be appropriate to give elaborate reasons about alleged harassment and domestic violence. Respondent No. 2 has made out a *prima facie* case that there was domestic violence.

11. It appears that, the Petitioner has deposited more than Rs. 7,00,000/- towards interim maintenance, however, as rightly submitted by Respondent No. 2, the Petitioner has not deposited entire amount towards interim maintenance till date. Learned counsel for Respondent No. 2 during the course of arguments submitted that, more than half of the total amount towards arrears of maintenance has not been deposited/paid by the Petitioner to Respondent No. 2. Learned Advocate appearing for the Petitioner on 10th April 2018 made statement before this Court (Coram-Nitin W. Sambre, J.) that, the Petitioner undertakes to clear the entire arrears by June 22, 2018 in two installments, the first of which 50% of arrears be paid by May 25, 2018 before the learned Magistrate and the second by June 22, 2018 before same Court. It appears that, this Court granted stay to the execution of the order of learned Magistrate and also the order of arrest till the next date. It was also observed in the said order that, if the Petitioner fails to deposit the arrears towards maintenance, the Court will be constrained to vacate the ad-interim *Bhagyawant*

order passed by the Court. It appears that, thereafter, ad-interim relief was not continued. However, on 14th August 2019 ad-interim relief was granted in terms of prayer clause (b) with the hope that, the Petitioner will deposit remaining amount of arrears towards maintenance. However, till date, the Petitioner has not deposited the remaining amount.

12. There are concurrent findings of facts recorded by the courts below that Respondent No. 2 is entitled for interim maintenance. Those findings appears to be in consonance with the material placed on record. In that view of the matter, no case is made out to cause interference in the impugned order. Hence, writ Petition stands rejected. Rule stands discharged.

13. Since the writ petition is rejected, Respondent No. 2 would be entitled to resort to an appropriate remedy for execution/implementation of the interim directions issued by the learned Magistrate, which are confirmed by the Sessions Court.

14. In view of disposal of writ petition, adjudication of the criminal application is not necessary and same stands disposed of accordingly.



15. The observations made herein above are *prima facie* in nature and confined to the adjudication of the present writ petition only.

16. All the contentions raised on merits are kept open to be agitated before the concerned Court.

17. At this stage, learned counsel appearing for the Petitioner prays for continuation of ad-interim relief granted by this Court on 14.08.2019 for four weeks from today. However, the said prayer is vehemently opposed by the learned counsel appearing for contesting Respondent. However, in the interest of justice, ad-interim relief granted by this Court on 14.08.2019 to continue for a period of four weeks from the date of uploading the judgment on the official website.

[S. S. SHINDE , J]