

M.C.C. No.134/2019.

Sau. Shahala -Vs- Mohd. Shakil

CNR No. MHAK070006882019.

Order below Exh.4

(Passed on 16<sup>th</sup> December, 2019)

1. Perused the application, say, documents and record of the case.
2. Heard both learned advocates at length.
3. Learned advocate for the applicant argued that applicant is subjected to domestic violence by non-applicants. Applicant is legally wedded wife of the N.A. no.1 and their marriage was solemnized on 01/01/2015 as per Muslim law. N.A. no.2 is father in law and N.A. no.3 is mother in law of applicant. N.A. no.4 and 6 are sisters in law of applicant. N.A. no.5 is husband of N.A. no.4. All non-applicants had informed the applicant at the time of solemnization of marriage that all immovable property and bank balance which is in the name of N.A. nos. 1 to 3 belongs to N.A. no.1. Applicant was also informed that N.A. nos. 2 and 3 will bear their expenses from the pension of N.A. no.2. Applicant went to reside with N.A. no.1 at Akola after solemnization of marriage. Applicant was residing with N.A. no.1 in his joint family along with N.A. nos. 2 and 3. N.A. nos. 4 and 5 were residing at Akola and they used to daily visit the residence of N.A. nos. 1 to 3. N.A. no.6 was

residing at other town but she used to frequently visit and reside at the residence of N.A. nos. 1 to 3 for 15 days.

4. Non-applicants properly treated the applicant for few days after solemnization of the marriage. But, thereafter, N.A. nos. 2 and 3 made illegal monetary demand of Rs.5,00,000/- to applicant and they suggested her to bring that money from her parents. N.A. nos. 2 and 3 also subjected the applicant to mental harassment on the count of the monetary demand and less dowry. N.A. nos. 4 and 5 were also committing the same activity. N.A. no.6 used to instigate the N.A. nos. 2 and 3 through telephone for the said illegal demand. Applicant informed the facts to N.A. no.1 but he was giving understanding to applicant. On 15/01/2018, N.A. no.3 had left the knob of cooking gas open and created mess of cooking in order to harass the applicant. Applicant asked N.A. no.3 about the incident but she told applicant that as to why she does not leave their residence despite repeated cruelty. Applicant went at her parental house and informed the incident to her parents. Applicant's parents gave understanding to non-applicants but they did not pay any attention. On 18/01/2018, the applicant went at her matrimonial residence in hope of her better future but N.A. nos. 2 to 6 refused her to enter the residence. Since then the applicant has been residing at her parental house. Thereafter, applicant lodged a report against N.A. nos. 2 to 6 at P.S. Khadan of Akola and after completion of

investigation chargesheet is filed against N.A. nos. 2 to 6. N.A. no.1 approached the applicant at Balapur after lodging the report and he threatened to kill her.

5. Non-applicants have subjected the applicant to physical and mental torture. Applicant has been living under threat of non-applicants and N.A. no.1 has not paid any attention or care for food, clothing and shelter of the applicant. N.A. no.1 is performing a business of buying and selling immovable property. He earns Rs.50,000/- p.m. from the business. N.A. no.1 is having five rooms residence at Akola. He is also owner of eight to ten plots at Akola and one another flat at Akola. He also receives rent of Rs.5000/- p.m. from the said flat. N.A. no. 2 was serving in a Zilla Parishad and he receives pension of Rs.25,000/- p.m. Nobody is dependant on N.A. no.1. Applicant is advocate by profession. Applicant's legal practice is interrupted as she was residing at Akola. Therefore, now applicant is having no independent source of income. Thus, applicant is praying for interim maintenance of Rs.30,000/- p.m. as food, medical and other daily expenses. Applicant is also seeking a relief of shared accommodation with N.A. no.1 with protection order or in alternate separate accommodation. Applicant is also praying for a prohibitory order in order to restraining the N.A. no. 1 from operating and withdrawing the fixed deposits in his name and from alienating immovable property standing in his name.

6. Non-applicants 1 to 3 and 6 appeared and resisted the application by filing their reply cum say (Exh.11). Non-applicants admitted the relationship between the parties. They have also admitted that applicant came to the house of N.A. no.1 at Akola. They admitted that N.A. no.2 is retired serviceman and applicant is advocate. But, they denied all the averments which are adverse to their interest. Learned advocate for N.A. no.1 argued that report is not lodged against N.A. no.1 for the offence punishable u.s. 498-A of the I.P.C. Applicant has given admission in her application that N.A. no.1 is having no independent source of income. Contrary to this, the applicant is senior advocate and she is having independent source of income. Applicant properly resided with non-applicants only for two to three months from solemnization of marriage. Thereafter, she was insisting the N.A. no.1 to reside separately from N.A. nos. 2 and 3. N.A. no.1 and other family members gave understanding to applicant that N.A. nos. 2 and 3 are old aged persons and it is not possible for N.A. no.1 to reside separately from them. But, applicant started harassment of non applicants and she was threatening N.A. no.1 to involve his entire family in false cases. Applicant is only interested in property of non applicants. N.A. no.2 was having brain hemorrhage and non-applicants have incurred about Rs.6,00,000/- for the treatment. N.A. no.3 also suffered heart attack. The N.A. no.1 is having no source of income. He has no balance in the banks. Therefore, learned advocate for

N.A. no.1 called for rejection of application and he also argued for decision of case on merits as there is non-availability of documentary evidence related to earning and property of N.A. no.1. There is also pursis on record that N.A. no.1 is visiting to applicant.

7. The applicant in support of her application has filed xerox copy of F.I.R, original marriage card, xerox copy of term deposit in the name of N.A. no.1. N.A. no.1 in support of his contentions filed xerox copy of C.T. scan report, xerox copy of medical bill, true copy of report along with xerox copy of reports against applicant. N.A. no.1 also relied on xerox copy of enrollment registration of applicant.

8. Learned advocate for applicant in support of his argument relied on various authorities. Dr. Akshay S/o. Navalkishor Lakhotiya -vs- Dr. Arti W/o. Akshay Lakhotiya, Bom. H.C., Crim. W.P. No.656 of 2015, Dt.15/12/2016, wherein order of interim maintenance passed by magistrate in favour of earning respondent wife is upheld considering status of parties and need of respondent to lead same standard as that of petitioner husband. Hema Rawal and Ors. -vs- Prashant Sharma, P & H. H.C., C.R.R No. 35 of 2013 (O & M), C.R.M. No. M- 14633 of 2013 (O & M), Dt.21/01/2015, wherein it is observed in para no.18 that the act is not made to provide alms to a destitute woman but right claimed by aggrieved person is a statutory right

irrespective of the economic status of the wife. Denying the relief to an educated professional aggrieved person would tantamount to classifying the woman for the purpose of the Act. Kaviraj Dattatray Muslonkar -vs- Rechana Kaviraj Muslonkar And Anr., Bom. H.C. (Aurangabad Bench ) Cri. Rev. Application No. 50 of 2017, Dt.19/04/2017, wherein it is held that if the trial Magistrate is satisfied that the application prima facie discloses that the respondent is committing or has committed any act of domestic violence, then he may grant an ex-parte order in the matter, on the basis of affidavit of the parties. Shamima Farooqui -vs- Shahid Khan, S.C., Criminal Appeal No.564 of 2015, 565 of 2015, Dt.06/04/2015, wherein Shila Rani's case, 1968 AIR (Del) 174 case is discussed in which it is observed that an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard.

9. Learned advocate for N.A. no.1 relied on various authorities in support of his argument. Shalu Ojha -vs- Prashant Ojha, 2017 CJ (SC) 872, wherein Hon'ble Apex Court observed in para no.10 that we are not giving the details of the properties and businesses as mentioned by the petitioner or the response thereto as given by him. It is because of the reason that after going through these

documents, we find that final view thereupon can be taken only after evidence is led by both the parties and the veracity of their respective stands is tested with their cross examination in the light of material which both the parties want to produce. Shri. Y. Kunjappan & Anr. -vs- Chitralekha Tarachand Anandi & Ors., 2011 ALL MR (Cri) 3212, wherein it is observed that provisions of the act are for the purpose of safeguarding the women from domestic violence. However, at the same time the provisions also cannot be permitted to be misused or abused. It is also observed that alleged ill treatment is also pertaining to the period of 2-3 months after marriage. The perusal of FIR would reveal that except general allegations regarding the ill treatment, no specific incidence of ill treatment either by the petitioner or his parents have been made in the said FIR. S.R. Batra & Anr. -vs- Smt. Taruna Batra, 2007 ALL MR (Cri) 3589 (S.C.), wherein it is observed that house of mother in law does not become “shared household” simply because wife had stayed there with her husband earlier for some time. Lokesh Shah -vs- Shraddha Shaha & Anr., 2012 ALL MR (Cri) 3230, wherein placitum speaks that premises in which husband had no right, not even as member of joint family ‘shared household’ which owns such premises would not be covered by definition of ‘shared household’ under S.2(5). Vikrant Ambhore & Ors. -vs- Varsha Ambhore, 2014 ALL MR (Cri) 2826, wherein plactium speaks that only allegation against petitioners is that of demand of some articles. No

averment that complainant was harassed, injured or coerced to meet such demand, which are necessary ingredients- Vague allegations- Averments prima facie, even if taken at its face value do not constitute offence of domestic violence- Except one petitioner against whom there are sufficient allegations, complaint against all others quashed.

10. In this case, relationship between the parties is not under dispute. It is not disputed that applicant is residing separately from N.A. no.1. Contents of the application and documentary evidence prima facie satisfied that applicant is subjected to domestic violence by non-applicants. Informant did not lodge any report of Sec. 498-A of I.P.C. against N.A. no.1 but, it cannot be inferred that N.A. no.1 did not commit any act of domestic violence. Because, scope of cruelty u.s. 498-A of I.P.C. and domestic violence are different. It appears from the averments of the application that N.A. no.1 did not pay any attention towards the alleged mental harassment of the applicant. He also threatened the applicant to kill as she put her grievance against other non-applicants before police authority. It is specifically contended by N.A. no.1 in his reply that he is whimsical. Reports are also lodged by N.A. no.3 against applicant but, nothing has been pleaded or come on record that action is taken by police. N.A. no.3 did not take any further action against applicant. Facts and circumstances of this case are different therefore, above discussed authorities namely Shri. Y. Kunjappan &

Anr. -vs- Chitralkha and Vikrant Ambhore & Ors. -vs- Varsha Ambhore are not helpful.

11. It has come on record that applicant is a senior lawyer who is enrolled as an advocate in the year 2001. It is also contended by N.A. no.1 that she has been practising at Balapur and Akola. It is also contended that applicant is having independent source of income and N.A. no.1 does not perform any work. However, according to applicant her practise is interrupted and affected as she was residing with N.A. no.1 at Akola. In this case, there is no dispute between the parties that the applicant is practising as an advocate. N.A. no.1 contended that he does not perform any work and no bank balance stand in his name is not inspiring confidence. Applicant has filed xerox copy of F.D. of Rs.6,00,000/- standing in the name of N.A. no.1. It is not disputed that applicant has not filed any documentary evidence to show any immovable property of N.A. no.1 but it is a specific contention of N.A. no.1 that applicant is intending to grab the entire property of non-applicant. Thus, at this juncture, such facts and circumstances lead to conclusion that N.A. no.1 is doing business of buying and selling immovable property and his parents are not dependent on him. But, it is also necessary to notice that immovable property business is suffering from inflationary situation and therefore, it can be concluded that N.A. no.1 might have been earning Rs.25,000/- to 35,000/- p.m. Facts

and circumstances of present case are different and hence, above discussed authority namely Shalu Ojha -vs- Prashant Ojha is not helpful.

12. Facts and circumstances of above authorities namely Dr. Akshay S/o. Navalkishor Lakhotiya and Hema Rawal and Ors. -vs- Prashant Sharma are very much similar to the present case. The applicant is appearing capable of earning being an advocate but it is also a duty of court to put her in the same standard of life as that of the N.A. no.1. N.A. no.1 has not filed any documentary evidence to show that N.A. no.1 is either sole or joint owner of the matrimonial residence of Akola. Thus, considering the law discussed in authority namely S.R. Batra & Anr. -vs- Smt. Taruna Batra is applicable to the present case. Hence, applicant is not entitled for shared accommodation. Applicant has been residing at Balapur with her parents. She is entitled for separate residence arrangement with protection order. It is not case of applicant that she is a joint owner of property and bank balance of N.A. no.1 and court cannot prohibit the N.A. from operating and dealing with the same. Day by day prices of goods and daily necessities are increasing. Applicant being a senior advocate is able to maintain herself but she is not living the same standard of life as of her husband. Therefore, considering life style, standard of living and totality of facts and circumstances, I hereby pass the following order.

**Order**

- 1] Application is partly allowed.
- 2] The N.A. no.1 is directed to pay Rs. 5000/- (Rs. Five thousand only) p.m. to applicant as interim maintenance including expenses for separate residence from the date of this application.
- 3] The non-applicants are prohibited from committing any kind of violence against applicant.
- 4] Prayer of the applicant for shared accommodation with N.A. no.1 and prayer for prohibitory order against N.A. no.1 for restraining him to deal with his bank's fixed deposits and alienation of his movable property is rejected.
- 5] Copy of this order shall be provided free of cost to the applicant and N.A. no.1.

Balapur  
Date 16/12/2019

Sd/-  
(N.P. Talnikar)  
Judicial Magistrate (F.C.)  
Balapur.

## Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : S.M.Rothe.

Court Name : Jt. C.J.J.D. & J.M.F.C., Balapur.

Date : 16/12/2019.

Signed by Presiding

Officer on : 16/12/2019.

Uploaded on : 16/12/2019.

---