

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Application No. 858 Of 2015.

SAYYAD MUJAMMIL S/O SAYYAD MUSA AND OTHERS.
VERSUS
THE POLICE STATION OFFICER,MIDC WALUJ AND OTHERS.

Appearance =>

Mr. Bramhanand Dhanure, Advocate for the Applicants.

Mr. U.B. Bhogale, Additional Public Prosecutor for the State of Maharashtra / Respondent No.1.

Mr. Gautam Pahilwan, Advocate for Respondent No.2.

Coram : V.M. Deshpande, J.

Date : 25th March, 2015.

Per Court :-

Heard Mr. Dhanure, learned counsel for the applicants and Mr. Pahilwan, learned counsel for Respondent No.2.

[2] This is an application filed under Section 407 of the Code of Criminal Procedure. Applicant No.1 - Sayyad Mujammil s/o Sayyad Musa (husband) and his relatives who wish that proceedings filed against them by Respondent No.2 – Asma Parveen w/o Sayyad Mujammil (wife) under the provisions of the Protection Of Women From Domestic Violence Act, 2005 bearing Criminal M.A.No.342 Of 2014 pending on the file of the learned Judicial Magistrate, First Class, Gangapur, Dist. Aurangabad be transferred on the file of the learned Judicial Magistrate, First Class, Hadgaon, Dist. Nanded, for

disposal according to law, where already two proceedings filed by Respondent No.2 – wife for the offence punishable under Section 498(A) of the Indian Penal Code and Criminal Application under Section 125 of the Code of Criminal Procedure are pending.

[3] It is to be noted that, wife, who appears to be destituted and was driven out of her matrimonial house by the husband and his relatives is forced to take shelter in her parental house. She is residing alongwith her parents at Jogeshwari, Tal. Gangapur, Dist. Aurangabad. The applicants till today have not taken care of Respondent No.2 - wife by providing any maintenance allowance to her in the application under Section 125 of the Code of Criminal Procedure, which is filed by the wife. The wife, unfortunately is not getting any interim maintenance and she is completely dependent on her father.

[4] The Protection Of Women From Domestic Violence Act, 2005 is brought into force with avowed object. The said Act provides for rights of the women to secure housing. It also provides for the rights of women to reside in her matrimonial home or shared household; whether or not she has no title or rights in such homes or household. Also the learned Magistrate can directed the monetary relief to the aggrieved person. The Magistrate is also empowered to direct to pay the compensation and damages for the injuries including mental torture and emotional distress caused by the act of the domestic violence committed by the respondent. Thus, in a way, the provisions as contained in the Protection Of Women From Domestic Violence Act, 2005 is a social legislation.

The person like present respondent No.2 is entitled to claim various reliefs available under the Act and accordingly, she has filed such proceedings bearing Criminal M.A.No.342 Of 2014.

[5] Respondent No.2 was forced to take shelter to her parents house. Due to the forced circumstances created by the present applicants, she is residing with her father since last one year and till her rights are adjudicated by the competent court, it appears that, she will require to continuer her stay with her father.

[6] The learned counsel for the applicants has strenuously urged before this court with the assistance of decided case in a case of Vijay Sudhakar Patil V/s. Sau. Asha Vijay Patil. [Criminal Application No.851/2014 dated 8th May, 2014. Coram : A.I.S. Cheema, J.] He has submitted that observations made in the case, cited above is squarely applicable to the given facts of the case in hand. He has invited attention of this court to paragraph No.8 of the said decision.

[7] It is to be noted that, facts given in the case in hand and case cited above are altogether different. In the said decided case, wife was residing temporarily in the house of her uncle. In that context, this court has interpreted the word “temporarily resides” and found that in the said case, husband made out a case for transfer.

[8] In the present case, facts are altogether different. Here the wife is required to take shelter in the house of her father and she is residing there since one year. That cannot be considered, by stretch of imagination, as temporary residence.

[9] Further attending the Court at Hadgaon, Dist. Nanded from Gangapur, Dist. Aurangabad will cause unnecessary financial burden on the wife; since other two cases are kept on different dates. It will put additional burden on the wife especially when applicant No.1 – husband and his relatives are not providing single naya paisa to the wife.

[10] Further prosecution under Section 498(A) of the Indian Penal Code is a proceedings initiated by the State and for that purpose, wife can always claim bhatta from the State and for that purpose, she will not require to spend money from her pocket.

[11] In that view of the matter and looking to the difficulty that wife may face in future due to financial constrains, this court is of a view that, present application is nothing but a novel way just to harass the wife in different ways. Hence, Criminal Application is dismissed with costs.

[12] The learned counsel for the applicants has fairly pointed out to this court that, there is interim order in favour of the applicants and in view of the rejection of this application, interim relief needs to be vacated. Accordingly, interim relief granted earlier is vacated.

(V.M. DESHPANDE, J.)