

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3583 OF 2015

SHAFI GULAB PINJARI
VERSUS
THE STATE OF MAHARASHTRA &

...

Advocate for Applicant : Wani Ruchir S.
APP for Respondents: Shri P.N.Mulay.
Adv. for respondent nos.3 to 11 : Shri S.P.Brahme.

...

CORAM : M.T.JOSHI,J.
DATED : 27TH AUGUST, 2015

ORDER :-

Heard both sides.

2] The present applicant who is the father of the deceased lady is praying for transfer of Regular Criminal Case No.52/2012 from the file of JMFC Dhule to the Sessions Court at Shahada, Dist.Nandurbar. Criminal case pertains to the offence punishable u/s 498-A, 323, 504, 506 r.w. 34 of IPC. Thereafter, as per the present applicant, the deceased lady has committed suicide while residing with him i.e. at parental home and therefore, next of the offence came to be registered on the strength of the FIR filed by present applicant for the offences punishable u/s 306, 498-A, 323. 504, 506 r.w. 34 of IPC at Shahada, Dist. Nandurbar.

3] Mr.Wani, learned counsel for applicant submits that since both the cases are based on the same set of facts, that the deceased was subjected to cruelty at the hands of the present respondent nos. 3 to 11, the regular criminal case pending on the file of JMFC be

transferred to the Sessions Court at Shahada, Dist.Nandurbar.

4] He relies on the provisions of Section 407, which reads as under:

“407. (1) Whenever it is made to appear to the High Court –

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice;

it may order -

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial

to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself." - - - - -

5] The learned counsel for respondent nos.3 to 11 however, opposed the application. He submits that the earlier criminal case is filed two years back while the present Sessions case has arisen recently. Considering the fact that both cases have arisen on the same set of facts except the offence punishable u/s 306 r.w. 34 of IPC which ultimately relates to the earlier alleged incident i.e. offence punishable u/s 498-A, 323, 504, 506 r.w. 34 of IPC, it would be in the interest of both the parties to have a common trial of both cases. There is no denial that the distance between Dondaicha and Shahada is less than 40 Kms. In these circumstances, the following order :

ORDER

Application is hereby allowed. R.C.C.No.50/2012 pending on the file of JMFC Dondaicha, Dist.Dhule is hereby withdrawn and transferred to the Sessions Court at Shahada, Dist.Nandurbar for joint trial with Sessions Case No.10/2013 pending on the file of the said Court.

(M.T.JOSHI,J.)

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