

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4187 OF 2014

Priya Sagar Badadhe

....Applicant.

Versus

Sindhubai Babasaheb Badadhe
and another

....Respondents.

Mr. K.C. Sant, Advocate for applicant.
Mr. R.A. Tambe, Advocate for respondent Nos. 1 to 3.
Mr. N.B. Patil, APP for State.

WITH
MISC. CIVIL APPLICATION NO. 87 OF 2014

Priya Sagar Badadhe

....Applicant.

Versus

Sagar Babasaheb Badadhe
and another

....Respondents.

Mr. K.C. Sant, Advocate for applicant.
Mr. R.A. Tambe, Advocate for respondent.
Mr. N.B. Patil, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 3rd March, 2015.

ORDER :

1. The proceedings are filed by the wife. The first proceeding is filed for transfer of R.T.C. No. 360/2009 presently pending in the Court of J.M.F.C., Shrirampur, District Ahmednagar and prayer is made to transfer it to the Court of J.M.F.C. from Pune. The second proceeding is filed for transfer of H.M.P. No.

28/2013 which is presently pending in the Court Civil Judge, Senior Division, Shrirampur, District Ahmednagar to the competent Court from Pune viz. Family Court Pune. The proceeding is filed by husband for divorce.

2. In the criminal case, not only the husband, but the three relatives of husband are accused and the case is filed for offences punishable under sections 498-A, 323, 34 etc. of I.P.C. It is the case of applicant/wife that as she has started living in Pune, it is not convenient to her to come to Shrirampur for giving evidence in this case. The learned counsel for the applicant placed reliance on observations made by the Apex Court in the cases reported as **AIR 2012 SC 326 (Deepti Bhandari Vs. Nitin Bhandari & Anr.)**. He submitted that in the said proceeding Hon'ble Apex Court transferred the criminal case filed for offence punishable under section 498-A and 406 of I.P.C. for the convenience of the wife. He placed reliance on one more reported case like **2008 (1) SC 231 [Gurpreet Kaur @ Rinky Vs. Vipin Kumar Gupta]**. In this case, Supreme Court transferred the case filed against the wife for offence of defamation.

3. When there is question of transfer of criminal case, the Court is expected to consider the convenience of all and also

the expenses, the State will be required to incur. Thus, it is not certain as to how much time will be required for disposal of the criminal case. It is a fact that the Court from Pune are more heavily burdened than the Court from Shrirampur. The learned J.M.F.C., Shrirampur to take care and see that on the first date or at the most on the second date, the evidence of complainant is completed and the case is expeditiously disposed of. Thus, the wife will be required to go to Shrirampur for this case only on one or two occasions. If the case is transferred to Pune, it is not certain as to how many dates the husband and his relatives, who include parents will be required to go to Pune. In view of these circumstances, this Court holds that it is not desirable to transfer the criminal case from the present Court to Pune Court and Criminal Application No. 4187/2014 stands rejected.

4. The learned counsel for respondent/husband made a submissions in Misc. Civil Application No. 87/2014 that initially the proceeding was filed for divorce on the ground of cruelty etc., but subsequently settlement had taken place and terms of settlement were filed and the matter was converted for mutual divorce. He submitted that the wife did not turn up and so the proceeding could not make progress. On the other hand, the learned counsel for wife submitted that in settlement terms,

there was term of giving of some amount to wife, but nothing is given by the husband to wife. The learned counsel submitted that the wife was required to file proceeding under the provision of Domestic Violence Act in the Court from Pune and in that proceeding also, order of maintenance and other allowance is made against the husband and not a single pie is paid by the husband in that proceeding. He submitted that the appeal filed against the said decision of J.M.F.C. is also dismissed by the Sessions Court. He submitted that not a single pie is paid to the wife and it has become difficult for the wife in H.M.P. proceeding to come to Shrirampur to contest the matter. It can be said that she will be required to come to Shrirampur on every date with her issue, who is now aged about 9 years. She will be also required to take a male person like her father from Pune to Ahmednagar and on every date, she will require to spend. As the husband is not paying anything and as she has no source of income, the learned counsel submitted that she will not be in a position to contest effectively the divorce proceeding. The learned counsel for wife submitted that it is a settled view that the convenience of wife needs to be considered. He placed reliance on some cases reported as **AIR 2002 SUPREME COURT 396 [Sumita Singh Vs. Kumar Sanjay and another], 2001 AIR SCW 4759 (1) [Seema Vs. Rakesh**

Kumar], 2011 (2) Mh.L.J. 44 BOMBAY HIGH COURT [Chaya w/o. Balaji Birajdar Vs. Balaji s/o. Ishwarrao Birajdar], 2012 (6) Mh.L.J. 453 BOMBAY HIGH COURT [Nilima Mahesh Muley Vs. Mahesh Madhavrao Muley]. This Court and Apex Court has discussed the nature of dispute and it is observed that in such cases, the Court is expected to consider the convenience of wife. The legislature has taken care to enable the wife to get the cost of proceeding, cost of conveyance and some other allowances in view of the provisions of sections 24 and 25 of the Hindu Marriage Act. Such provisions are made to see that the wife is able to contest the proceeding effectively. As the husband is not paying anything to wife in the present case, this Court holds that HMP needs to be transferred from present Court to Pune Family Court.

5. In the result, Misc. Civil Application No. 87/2014 is allowed. H.M.P. No.28/2013 presently pending in the Court of Civil Judge, Senior Division, Ahmednagar is withdrawn from that Court and it is transferred to Family Court Pune. The parties are to appear in the new Court on 27.4.2015.

[T.V. NALAWADE, J.]

ssc/