

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 395 OF 2015

Tulsidas Assudomal Meghrajani : Applicant
Vs.
Sonia Tulsidas Meghrajani & Anr. : Respondents
...

Mr. Mujib Mushir Khan for the applicant.
Mrs. A. R. Patil Addl. Public Prosecutor for the State .

CORAM : A.R. JOSHI, J.
DATE : 15TH JULY 2015

P.C.:

Heard learned counsel for the applicant and also learned APP for the State. This is an application preferred under Section 407 of Cr. P. C. for transfer of Criminal MA No. 67 of 2013 filed by the present respondent- wife of the applicant and which is pending before JMFC Pimpri. The applicant is asking for the transfer of said petition to the court of Civil Judge Senior Division Pune, and asked for clubbing it with parent Civil Suit No.1266 of 2013 pending before Civil Judge Senior Division Pune. Said another proceeding before Civil Judge Senior Division Pune was preferred by the wife under Section 18 of the Hindu Adoption and maintenance Act 1956 for getting the maintenance.

2. The argument on behalf of the applicant is that the issue involved in both the proceeding is the maintenance asked by the wife of respondent. In the Criminal MA No. 67 of 2013 the prayer of the wife is under Section 127 of Cr. P. C. on account of change in circumstances, asking for higher maintenance. Earlier in the application under Section 125 of Cr. P. C. monthly maintenance is awarded in favour of the present respondent wife in a sum of Rs.900/- per month. Reportedly that maintenance is paid till date. Thereafter on change circumstances application under section 127 of Cr.P.C. is filed. It was so filed in the year 2013 when the initial order under section 125 of Cr. P. C. is of the date 16th February 2000. In between apparently the Civil Suit is filed by the respondent wife being Special Civil Suit No. 1266 of 2013 (Old case No. 392 of 2010) for getting maintenance under section 18 of Hindu Adoption and Maintenance Act, and for certain declaration. Initially said suit was filed before CJSD Kalyan, being Old Case No.392 of 2010 and it was got transferred to CJSD Pune, being Special Civil Suit No. 1266 of 2013.

3. It is the factual position that the application which is sought to be transferred by the present application, is a part heard

matter and in which the evidence of the wife, that is present respondent, is already over and the present applicant, this respondent, is directed to lead his evidence and at this stage the applicant had approached this court for transfer of the said proceeding to CJSD Pune. Though, it is argued that it would be in the interest of both the parties to club both the matters preferred by the respondent wife, in fact there is another hitch in the matter to the effect that the application pending before SD Pune, is under Section 18 of the Hindu Adoption and Maintenance Act, and there defence has been taken by the present applicant husband that a deed of divorce has been executed prior to filing of such application/suit. As per the mandate of law a divorced wife is not entitled to maintenance under section 18 of the Hindu Adoption and Maintenance Act. Whatever that may be, it would be the question to be decided by the concern court whether actually there was a divorce effected between the parties or not.

4. At present apparently there is no reason to transfer the part heard pending application No. 67 of 2013 from JMFC Pimpri, to Civil Judge Senior Division Pune. On the contrary the said application can be expeditiously disposed of on its won merit by

the concern JMFC at Pimpri.

5. Moreover, the present application for transfer is made only in June 2015 when the evidence of the respondent wife was over and the applicant was directed to adduce his evidence opposing the application under section 127 of Cr. P. C. In fact filing of the proceeding under section 18 of the Hindu Adoption and Maintenance Act, since the year 2010 was known to the present applicant and definitely he was having the knowledge of the same when wife had preferred an application under section 127 of Cr. P.C. and which is MA No. 67 of 2013. This belatedly filing at the part heard stage of the application is also of much significance so as not to allow the present application and the present application is therefore dismissed at the admission stage and accordingly disposed of.

(A.R. JOSHI, J.)