

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Criminal Application (APPP) No. 782 of 2015

in

Criminal Application (APPLN) No. 30 of 2015

(Dadaram S/o Bhayyaji Maske Vs. Vibha Deepak Motghare)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri R. K. Tiwari, Advocate for applicant

CORAM : P. B. VARALE, J.

DATE : 5-8-2015.

Heard learned counsel for the applicant.

Criminal Application No. 30/2015 is presented before this Court seeking transfer of the proceedings, namely, Miscellaneous Criminal Application No. 50/2009 from the file of Judicial Magistrate First Class, Court No. 2, Bhandara to any other Court of competent jurisdiction in Bhandara Division.

Shri Tiwari, learned counsel for the applicant submits that the applicant apprehends that due to undue haste of the learned Presiding Officer, the applicant may not get justice from the said Court. Learned counsel for the applicant by inviting my attention to the order passed by the learned Magistrate dated 1-8-2013 submits that learned Magistrate observed that in spite of several chances given to the non-applicant, the non-applicant did not argue the matter. The learned Magistrate then passed the order of closing the argument and posting the case for judgment on merit. Shri Tiwari then by

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inviting my attention to the copy of roznamas placed on record submits that roznama clearly reveals that on 13-10-2011, the matter was posted on further date for arguments. Learned counsel for the applicant then submitted that thereafter on various dates, the present applicant was either personally present or the learned counsel appearing for the applicant was present before the Court. He submitted that on the contrary, the non-applicant i.e. wife failed to appear before the Court on various dates. He submits that the roznamas show the non-applicant, meantime, also sought a change of counsel and, accordingly, legal assistance was provided to her. Shri Tiwari, learned counsel then submits that on 17-7-2013, the applicant was absent and the matter was posted on 1-8-2013. He submits that on 1-8-2013, the learned counsel appearing for the applicant though was not present in the morning, he immediately reported at 12.30 p.m., meantime, learned Judicial Magistrate First Class hurriedly passed the order. Shri Tiwari, learned counsel submits that the learned counsel who reported at 12.30 immediately filed pursis stating in the pursis that on earlier dates, the applicant was present whereas the non-applicant was not present and she filed various applications. Shri Tiwari submits that the pursis was submitted at 12.50 p.m.

Shri Tiwari, learned counsel then submits that by order dated 20-4-2015, this Court issued notice to the non-applicant. Shri Tiwari submits that an

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objection was raised by the office that correct address of the non-applicant was not supplied whereas the applicant has provided the address which is reflected in the proceedings before the learned Judicial Magistrate First Class and learned Sessions Judge, Bhandara. In spite of this, the applicant made an attempt to seek correct address of non-applicant so as to see that there is no office objection in Criminal Application No. 30/2015 filed before this Court and filed an application before the learned Magistrate, Bhandara submitting therein that as the applicant has filed an application before this Court and the notices issued were not served and as such, prayed for directions to provide the fresh and correct address of non-applicant. Shri Tiwari submits that even on this application, the learned Magistrate under erroneous impression observed that the applicant is trying to put the trial Court under pressure and the application was rejected. Shri Tiwari submits that it was the attempt of the applicant to seek the fresh and correct address of non-applicant so that the applicant can serve the non-applicant. But the learned Magistrate rejected the application on erroneous consideration. Shri Tiwari, learned counsel submits that all these events show that the learned Magistrate is hurriedly prosecuting the proceedings and the applicant may not get a fair chance. Shri Tiwari thus submits that if interim orders are not granted, the applicant would have to face serious prejudice as the Court below is making undue haste in proceeding.

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In view of the submissions of the learned counsel, ad-interim stay in terms of prayer clause (a) of the application.

Criminal Application (APPLN) No. 30/2015

Issue fresh notice to the non-applicant, returnable on 26-8-2015.

Learned counsel Shri Tiwari prays for humdast of the notice so as to serve the non-applicant along with usual mode of service. Prayer is granted.

Interim order till the non-applicant causes her appearance before this Court.

JUDGE

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