

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

CRIMINAL APPLICATION NO. 1245 OF 2014

Sambhaji s/o. Gangadhar Phulari & ors. .. Applicants

Versus

The State of Maharashtra & another .. Respondents

Mr. S.S. Halkude, Advocate for the applicants.

Mr. P.S. Patil, A.P.P. for respondent/State.

Mr. S.N. Lale h/f. Mr. S.G. Rudrawar, Advocate for R-2.

CORAM : A.V.NIRGUDE, J.

DATED : 18.04.2016

P.C. :-

1. Heard. This application is moved by accused in R.C.C. No.67 of 2009, which is pending before the Court of J.M.F.C., Degloor, Dist. Nanded, seeking transfer of the case to the Court of J.M.F.C., Chakur, Dist. Latur, on the ground that such place for trial would be convenient to all the concerned parties.

2. Facts leading to this application are as under:-

. Applicant-Sambhaji is married to respondent No.2-Shailaja. Due to marital discord, now they are staying separately. Because of alleged cruelty meted out to respondent-Shailaja, she lodged a complaint to Police of Degloor Police Station on 18.04.2009, in which she alleged that she was treated with cruelty while she was staying with applicant-Sambhaji at Chakur and Parali. She also alleged that few days prior to filing of the complaint, applicant-Sambhaji performed bigamous marriage on 17.03.2009 at village Jahira Sangam, a place somewhere in Karnataka.

3. The question that arises for consideration in this application is – whether the joint complaint for offence punishable under section 498-A and 494 of the Indian Penal Code can be jointly held? Second question is – whether learned J.M.F.C. at Degloor would have jurisdiction to try the case? Apparently, offence of bigamy is an independent offence. The question is – whether it could be said to be a cognate offence punishable under section 498-A of the Indian Penal Code? The answer appears to me in affirmative. Offence punishable under section 498-A of the Indian Penal Code is subsequently added to the Indian Penal Code. In this section, definition of cruelty is mentioned as under :-

For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

4. As per narration in the complaint, the main offence alleged against applicant-Sambhaji is of marital cruelty as defined under section 498-A of the Indian Penal Code. In addition to this, respondent No.2 alleged that he also performed bigamous marriage. In my view, performing bigamous marriage would certainly amount to a willful conduct, which would likely to drive victim-spouse to commit suicide or to cause grave injury or danger to her life. When respondent No.2 would know that her husband had taken a second wife, she would suffer shock. She would get depressed and such conduct thus would amount to cruelty as defined under section 498-A of the Indian Penal Code. The case, thus, would fall within the parameters of section 220 of the Code of Criminal Procedure. The offences are of same kind and had allegedly been committed in one series of acts connected together so as to form one transaction.

5. Despite this, learned Counsel for the applicants brought to my notice provisions of Section 407 of the Code of Criminal Procedure, which gives power to this Court to transfer cases from one Court to other on the ground of general convenience of the parties or witnesses etc. I am not inclined to accept this contention of the applicants that transferring the case to Chakur would be in general convenience of the complainant who is protagonist of this litigation.

6. The Criminal Application, therefore, stands rejected.

[A.V.NIRGUDE,J.]