

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

CRIMINAL WRIT PETITION NO. 1436 OF 2015

Devidas s/o Shamrao Pawar,
Age: 39 years, Occ: Pensioner,
R/o. Plot No. 38, Mayur Park,
Kartik Nagar, near Maher Hospital,
Harsul Area, Aurangabad.

...Petitioner

versus

1. Mrs. Nanda w/o Devidas Pawar,
Age: 32 years, Occ: Well to do,
Residing presently at c/o
Mr. Haridas Vishwanath Tandle,
At and post Ganori, Tal. Phulambri,
District Aurangabad.

And also at

Mrs. Nanda w/o Devidas Kale,
c/o Madan Mhadu Kale,
age: 30 years, Occ: Service,
R/o. Rajput House, Plot No. 6,
Aditya Nagar, near Dadoji Konddeo
School, Mayur Mark, Harsul area,
Aurangabad.

2. The State of Maharashtra. ...Respondents

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Mr. Hemant Surve, Advocate for petitioner
Mr. P. V. Suryawanshi, Advocate for respondent No. 1
Mr. D.V. Tele, A.P.P. for respondent No. 2

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**CORAM : N.W. SAMBRE, J.
DATE : 16th MARCH, 2016**

ORAL ORDER :

This petition is questioning the order passed by learned Sessions Judge, Aurangabad on 03/02/2015 in exercise of powers under Sections 408 of Code of Criminal Procedure, 1973 (hereinafter

shall be referred to as 'the Code' for the sake of brevity), refusing the prayer of the present petitioner seeking transfer of the proceedings bearing P.W.D.V.A. Appeal Nos. 13 of 2014 and 16 of 2014 pending on the file of the Court of District Judge-4, Aurangabad to any other competent Court, at Aurangabad.

2. The facts, as are necessary, for deciding the present writ petition, are as under:

The present petitioner claimed to have married to the respondent on 02/05/1999 and blessed with two kids, namely Pratik and Prerna, aged about 10 years and 6 years respectively. It is claimed that, respondent Nanda, legally wedded wife of the petitioner, is living adulterous life and as such, has abandoned her matrimonial relations with the present petitioner. It is claimed that, on 05/08/2013, the petitioner filed a petition for divorce on the ground of adultery.

The respondent thereafter filed application before the Magistrate under provisions of Protection of Women from the Domestic Violence Act, 2005 praying therein monetary aid, residential arrangement, protection order, custody order along with the application for interim custody of minors. The said claim for

access and custody was disallowed on 24/03/2014, however, monetary aid of Rs. 2,000/- per month was ordered along with providing room to the respondent No. 1 for her residence.

The petitioner then challenged the said order dated 24/03/2014, on 10/04/2014 before the learned Sessions Court. The respondent approached Family Court seeking custody of minors, wherein by order dated 06/06/2014, learned Family Court directed access of one hour on each Saturday of the month.

3. It is claimed that, though minors were brought before the Family Court in compliance with the order, the children were not ready to meet their mother i.e. respondent No. 1 herein. According to the petitioner, he then moved an application on 20/09/2014 seeking modification of the order dated 06/06/2014 passed by learned Family Court granting access. The another application came to be moved on 30/10/2014 under the provisions of Protection of Women from the Domestic Violence Act, 2005 seeking temporary custody during Diwali vacation, which request was turned down by the Family Court and then respondent-wife moved for seeking temporary custody of the children for Christmas vacation, on 15th December, 2014, in the appellate proceedings, which was pending. The said application came to be allowed by order dated 20/12/2014. As it is claimed that

the kids were not ready to part the company of the petitioner and go with the mother, on 23/12/2014 an application came to be moved for revocation of the earlier order passed by learned District Judge-4 dated 20/12/2014. It is then claimed that, the said order dated 20/12/2014 was not given effect for some reasons, which has prompted the respondent No. 1 to file application on 02/01/2015 for temporary custody of minors. The learned District Judge, while dealing with the said application on 02/01/2015, ordered that as to why the contempt proceedings should not be initiated against the present petitioner and called the say in the matter.

4. In this background, the petitioner claimed that, he has formed an opinion that, the said Judge is carrying bias against him, particularly in the light of repeated favoritism shown by him, in favour of respondent-wife, moved an application for transfer of appeals from the Court of District Judge-4, Aurangabad to any other Court at Aurangabad, which came to be dismissed by the impugned order. As such, present petition.

5. Learned Counsel for the petitioner, in the background of above referred facts, would strenuously urge that the petitioner is entitled for the transfer of proceedings from the file of District Judge-4, Aurangabad, to any other Court, at Aurangabad, as from

the narration of facts and events herein before, depicts that the said Judge has acted in bias manner, which has prompted the petitioner to form an opinion that he is not likely to get justice from the said Court. Mr. Surve, learned Counsel for petitioner has taken me, in detail, through each and every proceedings initiated before the learned District Judge-4 and orders passed there on. According to him, the respondent along with one Kale, with whom, she is living adulterous life, is attending the Court and once the Court noted that, children were not ready to go with the mother, even for temporary period, the Court, contrary to the provisions of Guardian and Wards Act ought not to have ordered temporary custody, which demonstrate bias on the said Judge. He would then submit that, the learned Judge has made uncalled comments against the party during the course of hearing, as is narrated in the application, which according to him, is formed basis for seeking transfer. He would then submit that, learned District Judge-4, while dealing with the applications for transfer, has failed to consider all the facets of the matter and without considerations, has rejected the applications seeking transfer.

6. Learned Counsel for the respondent No. 1, while opposing the prayer would urge that, the respondent has taken recourse to the remedy in the capacity of mother of children seeking such statutory benefits as are available to her under Protection of

Women from Domestic Violence Act, 2005 or temporary custody of children. He would then submit that, persistent of non-compliance of the orders by the present petitioner, cannot be a ground to attribute bias on the part of learned Judge, as learned Judge has proceeded to pass order strictly in accordance with law. He would then submit that, the orders, if any, were passed against the present petitioner are illegal or contrary to law, remedy of the petitioner lies elsewhere and not by way of seeking transfer. According to him, the attempt of the petitioner is nothing but to protract the litigation. He would then invite my attention to the various orders passed by the learned Sessions Court, which were till date, not complied with, by the petitioner, as such, the petition itself is not tenable and is liable to be rejected.

7. Having bestowed my anxious thoughts to the submissions made by the respective Counsel, it is required to be noted that, pursuant to the order passed by this Court dated 15/06/2015, calling report from the learned Sessions Judge, Aurangabad, in respect of allegations made by the present petitioner in Criminal Misc. Application No. 17 of 2015, the report was forwarded by the learned Principal District & Sessions Judge, Aurangabad, after calling the report from learned District Judge-4 and Additional Session Judge, Aurangabad, in the present matter.

8. I have perused the said report dated 03/07/2015

submitted by learned District Judge-4 to learned Principal District and Sessions Judge, Aurangabad, who in turn, forwarded the same before this Court. The said report by a Judicial Officer is self-explanatory.

9. It is required to be noted that, the orders of temporary custody passed by the learned District Judge-4, Aurangabad were not subjected to challenge by the petitioner in appeal before higher authority and the petitioner has chosen to suffer the said orders. The petitioner appears to have chosen a path of resisting such orders instead of complying with the same by making baseless and wild allegations against learned Presiding Officer.

10. The law, on the point of powers of transfer to be exercised, is well settled. It is required to be noted that the incident has taken place, as directed in the application for transfer are though claimed to have been true by the petitioner, however, there is enough material on record including that of conduct of the petitioner, which prompts that, there is hardly any material to form an apprehension in the mind of the petitioner that, he is not going to get fair and impartial trial from the Presiding Officer i.e. District Judge-4, Aurangabad. It is further required to be noted that the assurance of fair trial is on the part of process of dispensing of justice, however, for following

wording, such as, there has to be some more substantial, more compelling and more imperilling material to be brought before the Court seeking exercise of powers of transfer, such apprehension of not getting fair trial treatment need not be based on certain imagination, conjunctures or surmises but must be based on certain concrete circumstances, which has prompted him to reach a conclusion that he will not get fair trial from Presiding Officer, who is biased against him.

11. From the report of learned Principal District Judge, Aurangabad and upon perusal of the observations made by the learned Sessions Judge, Aurangabad in the order impugned, I find hardly any material to interfere in extra ordinary writ jurisdiction, so as to exercise the powers under Section 406 of the Code ordering the transfer. What is noted in the present case is, the petitioner instead of complying with the order, has shown his unnecessary resistance to the order.

12. In this background, in my opinion, no case for interference in extra-ordinary writ jurisdiction is made out, the petition, as such fails, stands dismissed.

13. Since the learned Counsel for respondent No. 1 has appeared through the Legal Aid, fees payable to him including expenses is quantified at Rs.5000/- (Rs. Five thousand only).

[N.W. SAMBRE, J.]

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