

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

CRIMINAL APPLICATION NO. 2607 OF 2016

PRANIT S/O. DATTATRAY JAMDAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

...
Advocate for Applicants : Mr S S Kulkarni
APP for Respondent 1: Mr P G Borade
Advocate for Respondent 2 : Mr R R Karpe

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CORAM : V.K. JADHAV, J.
Dated: September 28, 2016

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PER COURT :-

1. Being aggrieved by the order dated 5.4.2016 passed by the Principal District and Sessions Judge, Ahmednagar below Exh.1 in Criminal M.A.No.101/2015, the applicants original accused in RCC No.184/2014 filed the present criminal application.

2. Brief facts, giving rise to the present application are as follows :-

a] The applicant no.1 and respondent no.2 got married as per Hindu rites and rituals on 20/02/2011. However, differences crop up between them and respondent no.2 constrained to initiate various

proceedings. On the basis of the complaint lodged, crime no.219/2014 for the offences punishable u/s 498(A), 354(A)(1)(2), 323, 504, 506 read with section 34 of the Indian Penal Code, came to be registered at Police Station, Kopergaon on 21/07/2014. After due investigation Police Station Kopergaon filed a charge sheet before the Judicial Magistrate First Class, Kopergaon and said case is numbered as RCC No. 184/2014. Respondent no.2 original complainant filed a Criminal Miscellaneous application No. 10/2015 for transfer of said case to the Court of Judicial Magistrate First Class, Shrirampur. However, said application came to be dismissed in default. Respondent No.2-original complainant again filed an application bearing Criminal Application No.101/2015 before the Principal District and Sessions Judge, Ahmednagar requesting therein for the transfer of the said case from Kopergaon to Shrirampur. The learned Principal District and Sessions Judge, Ahmednagar, by impugned order dated 5.4.2016 allowed the said application and accordingly transferred the proceedings of RCC No.184/2014

pending before the Judicial Magistrate First Class, Court No.1 at Kopargaon to the Court of Judicial Magistrate First Class, Court No.2, at Shrirampur where the proceedings under the Protection of Women from Domestic Violence Act, 2005 vide Criminal M.A. No. 493/2014 is pending. Hence, this Criminal Application.

3. The learned counsel for the applicant submits that, respondent no.2 sought transfer of the said case on two grounds. Firstly, that one another criminal case under the provisions of Protection of Women from Domestic Violence Act before the Judicial Magistrate First Class, Shrirampur is pending and it would be thus just and convenient for both the sides if both the cases are clubbed and tried by one and the same Judge/Magistrate. Secondly, respondent no.2 has expressed apprehension of danger to her life at the hands of applicant and other family members. Learned counsel submits that the Principal District and Sessions Judge has transferred said case by passing impugned order only after considering the convenience of

respondent no.2-complainant and the case is not transferred on the ground that a fair and impartial trial cannot be had before the Criminal Court at Kopargaon. The learned counsel submits that even the witnesses and the police machinery has to travel from Kopargaon to Shrirampur to attend the case if it is transferred to Shrirampur from Kopargaon. The respondent no.2-original complainant has filed one another application bearing Criminal M.A.No.10/2015 for the same relief and said application came to be dismissed for want of prosecution on 17.7.2015. Thus, the subsequent application for the same prayer is not maintainable and liable to be dismissed on this ground alone.

4. The learned counsel in order to substantiate his submissions placed reliance on following two cases.

i]. Jyoti Mishra Vs. Dhananjaya Mishra reported in (2010) 8 Supreme Court Cases 803.

ii]. Usmangani Adambhai Vahora Vs. State of Gujarat and Others, Criminal Appeal Nos. 1592-1593 of 2015.

5. The learned counsel for respondent no.2 submits that admittedly one another case is pending before

Shrirampur court and it would be convenient for both the parties to attend the said case if tried by one and the same Magistrate. Learned counsel submits that distance between Shrirampur and Kopargaon is 50 kilometers approximately and thus, there is no question of causing any inconvenience to either of the parties if the case is transferred from Kopargaon to Shrirampur. First application came to be dismissed in default and therefore second application came to be filed by the respondent no.2. There is no bar as such to reject the second application on the ground that first application came to be dismissed for default.

6. Application filed by respondent no.2-wife is resisted by the applicant-original accused only on the ground that said criminal case RCC No.184/2014 is ready for hearing before the Magistrate and there is no reason to transfer the said case.

7. In a case Jyoti Mishra Vs. Dhananjaya Mishra supra relied upon by the learned counsel for the

applicant, in paragraph no.5 the Supreme Court has made following observations :-

“5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic.”

8. In the case cited above, after due investigation, police submitted charge sheet before the Court at Hyderabad and in the meanwhile the petitioner-wife therein left her house at Hyderabad and started residing with her parents at Indore. In the backdrop of these facts, the Supreme Court has observed that the accused in the said case may not be able to attend the court proceedings at Indore for many reasons, one of which is financial constraints and the consequences of non

appearance of the accused before the Indore Court would be quite drastic.

9. In the instant case, application filed by respondent no.2 wife under the provisions of Protection of Woman from Domestic Violence Act, is already pending before the Judicial Magistrate First Class, Shrirampur. In that way, applicant-original accused is required to attend the said case at Shrirampur. Furthermore, distance between Shrirampur and Kopargaon is 50 kilometers approximately. Under these circumstances, I do not think that the order impugned has been passed without any basis.

10. So far as powers of the Sessions Judge to transfer the case as provided under section 408 of the Code of Criminal Procedure is concerned, the order of transfer can be passed if it is expedient for the ends of justice. In the case in hand, the learned District and Sessions Judge has rightly exercised discretion in favour of respondent no.2 - wife. The learned Principal District

and Sessions Judge has also taken care to transfer the case from Kopargaon to Magistrate at Shrirampur before whom the proceedings under the Protection of Woman from Domestic Violence Act is pending.

11. At this stage, the learned counsel for the applicant submits that, the Magistrate at Shrirampur may be directed to keep both the cases on one and the same date for hearing till the disposal of those cases. I do not think that such directions are required to be issued. The Magistrate may give the dates of both the cases as per the convenience of the parties and also considering the fact that the parties of both the cases are one and the same.

12. I do not find any substance in this Criminal Application. Hence, order.

O R D E R

Criminal Application is hereby rejected.

(V.K. JADHAV, J.)

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