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

CRIMINAL APPLICATION NO. 3855 OF 2015

Sou. Rashmi w/o Parag Shimpi,
Age: 28 years, Occu: Household,
R/o. House No. 7/3, Harsool,
Aurangabad, Tq. & Dist. Aurangabad

..APPLICANT

VERSUS

1. Parag S/o Narayan Shimpi,
Age: 31 years, Occu: Service,
R/o. Tulsi Dham, B-wing, Flat No. 406,
Shindeali, Aaptewadi, Badlapur (East),
Dist. Thane
2. Somnath S/o Narayan Shimpi,
Age: 60 years, Occu: Service,
R/o. Shanti Nagar, 31-B,
Wagheshwari Mandir Road,
Nandurbar, Tq. & Dist. Nandurbar
3. Sou. Ranjana W/o Somnath Shimpi,
Age: 56 years, Occu: Household,
R/o. Shanti Nagar, 31-B,
Wagheshwari Mandir Road,
Nandurbar, Tq. & Dist. Nandurbar
4. Prasann S/o Somnath Shimpi,
Age: 29 years, Occu: Business,
R/o. Shanti Nagar, 31-B,
Wagheshwari Mandir Road,
Nandurbar, Tq. & Dist. Nandurbar
5. Ashok S/o Dodhu Sonwane,
Age: 67 years, Occu: Agri.,
R/o. Balwand, Tq. Shindkheda,
Dist. Dhule

..RESPONDENTS

Mr P. V. Suryawanshi, Advocate (appointed) for applicant;
Mr H. F. Pawar, Advocate holding for Mr C. R. Deshpande, Advocate for
respondents

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CORAM : N.W. SAMBRE, J.**DATE : 11th April, 2016****ORAL ORDER :**

This is an application by applicant - wife seeking transfer of two proceedings, namely, Criminal Misc. Application No.156 of 2013 initiated by her under the provisions of the Protection of Women from Domestic Violence Act, 2005 and Criminal Misc. Application No.65 of 2014, initiated under section 125 of the Code of Criminal Procedure, from the Court of Judicial Magistrate First Class, Yawal to the Court of Judicial Magistrate First Class at Aurangabad, as, according to her, proceedings in petition No.B-8 of 2015 initiated under the provisions of section 12 (1) (a) of the Hindu Marriage Act, for decree of nullity of marriage is pending before the Family Court, Aurangabad.

2. It is claimed by the applicant that after the marriage on 19th March, 2012, in view of cruelty and demand of dowry, she was compelled to initiate the above referred two proceedings at Yawal. My attention is also invited to the registration of C.R. No.143 of 2013 with police station, Yawal for an offence punishable under section 498-A of the Indian Penal Code at the behest of the applicant. In this background, while trying to make out a case for transfer of proceedings under section 407 of the Code of Criminal Procedure, relying upon the judgment of this Court in the matter of **Saraswatibai Parle vs. Mokinda Parle**, reported in **2006 (1) Mh.L.J. (Cri.) 969**, it is urged that the convenience of the wife is required to be taken into

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account. So as to substantiate his contention, learned Counsel appearing on behalf of the applicant has invited my attention to the fact that the applicant has started residing at House No.7/3, Harsool, Aurangabad with her uncle from where she has initiated the proceedings in the Family Court, Aurangabad for nullity of marriage. Learned Counsel then would submit that search of employment and pressure brought on the applicant at Yawal, has prompted her to come to Aurangabad and initiate the proceedings in the Family Court.

3. Learned Counsel appearing on behalf of the respondent would urge that the application is moved with a *mala fide* intention, so as to cause hardship to the parents of the respondent, who are aged persons and residing at Taluka Shindkheda, District Dhule. He would then submit that the applicant cannot be choosy about the forum and it is the forum shopping that is taken recourse to by the applicant by initiating proceedings at Yawal as also at Aurangabad. According to him, the cause cited is artificial and as such he sought rejection of the application by relying upon the judgment dated 8th May, 2014, rendered by this Court in the matter of **Vijay Sudhakar Patil vs. Asha Vijay Patil**, in Criminal Application No.851 of 2014, which according to him is in similar set of facts as in the present case.

4. Having bestowed my consideration to the submissions made, it is required to be noted that the applicant has initiated in all three proceedings at Yawal, i.e. two proceedings of which transfer is sought, initiated under

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the provisions of Protection of Women from Domestic Violence Act, 2005 and Code of Criminal Procedure and the criminal complaint for an offence punishable under section 498-A of the Indian Penal Code at Yawal. It is also subsequent thereto, the applicant claimed to have shifted to Aurangabad in search of employment and has initiated proceedings for nullity of marriage. If the claim as is sought to be put-forth is analyzed in the background of the allegations made, particularly the basis sought to be espoused seeking transfer of proceedings under section 407 of the Code of Criminal Procedure, it is to be noted that the applicant had initiated proceedings at Yawal as per her convenience and then claimed to have shifted to Aurangabad for employment purpose, which fact is disputed. So far as the above referred claim is concerned, I hardly noticed any pleadings to that effect in application preferred before the Family Court at Aurangabad, which prompted her to initiate proceedings at Aurangabad. The other material found for rejecting the application is that the respondent-husband is residing at Badlapur, Dist. Thane, whereas his parents reside at Nandurbar. Learned Counsel appearing on behalf of the respondent was right in contending that so as to cause more hardship to the parents of the respondent, who are named as accused in the above referred proceedings which are pending at Yawal, the transfer under section 407 is sought. The fact remains that the applicant is residing at Aurangabad for employment purpose and though she claimed to be residing with her uncle, still upon verification of the name of uncle with that of her father, I find no substance in the said submission.

5. Though reliance is placed on the judgment of Saraswatibai Parle (supra) by the learned Counsel appearing on behalf of the petitioner, still perusal of paragraph 6 of the said judgment depicts that the factual matrix which had prompted this Court to proceed ahead with the transfer under section 407 are conspicuously absent in the present proceedings. The present case appears to be some what similar to that of the view taken in the matter of Vijay Patil (supra).

6. In the above background, in my opinion, no case for grant of relief under section 407 of the Code of Criminal Procedure is made out. Thus, the application fails and stands rejected.

7. Fees and expenses payable to the learned Counsel appointed on behalf of the applicant is quantified at Rs.5,000/-.

(N.W. SAMBRE, J.)

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