

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

CRIMINAL APPLICATION NO.1002 OF 2017

Rupali Prakash Suryawanshi

.. Applicant

Versus

The State of Maharashtra
and others

.. Respondents

Mr.Pramod D. Patil, Advocate for the applicant
Mr.P.N. Kutti, APP for the respondent/State

CORAM : V.L.ACHLIYA, J.

DATED : 02.03.2017

P.C. :-

1. The applicant has moved this application under Section 407 of the Criminal Procedure Code seeking transfer of Regular Criminal Case No.179 of 2015 pending in the Court of Judicial Magistrate, First Class, Court No.2, Dhule to the Court of Judicial Magistrate, First Class, Nashik. The application is moved solely on the ground that the applicant is handicapped person and she is suffering physical disability to the extent of 40%.

2. Heard learned counsel for the applicant and APP for the respondent/State.

3. In my view no case is made out to entertain the application on the ground that she being handicapped

unable to regularly attend the Court at Dhule. The reason assigned is not sufficient to entertain the request for transfer of the case. It is pertinent to note that the case sought to be transferred is not a private case but it is a case registered on the basis of report filed by the Police Station. The complainant has lodged the complaint with Police Station, Dhule against the accused persons i.e. against husband, mother-in-law, father-in-law, sister-in-law and brother-in-law of ill-treatment and harassment. On account of complaint lodged offences under Sections 323, 406, 498-A, 500 & 504 r/w 34 of the Indian Penal Code came to be registered vide Crime No.96 of 2014 against the accused. They were charge-sheeted in the Court of J.M.F.C., Dhule. From the copy of roznama filed alongwith application it reveals that the charge against the accused was framed on 17.09.2016 and thereafter the case was posted on 21.11.2016 for recording the evidence of the complainant i.e. present applicant. The applicant has not attended the Court on 21.11.2016 there after the case was posted on 05.12.2016 for her appearance and recording the evidence. On that date the applicant appeared and refused to give evidence and obtained the adjournment. The case was posted on 23.01.2017. On that date the applicant moved an application seeking adjournment for a period beyond 90 days by assigning the reason that she would remain busy in some religious

program for a period of 90 days and thereafter she will move the High Court for transfer of the case. Learned J.M.F.C. has rejected the application by recording reason in detail. In the order passed the learned Judicial Magistrate, First Class, Dhule, he has specifically observed that the applicant has moved the application seeking adjournment with intention to protract the hearing of the case.

4. Thus there are no bonafide on the part of the applicant in making this application. The present application appears to be made with a motive to protract the hearing of the case instituted at her instance against her husband and in-laws. There is no much distance between Dhule and Nashik. They are adjacent districts. As per the certificate produced on record the applicant certified to be suffering from physical impairment of left leg to the extent of 40%. It is therefore difficult to accept the contention of the application that due to such disability she is unable to attend the Court at Dhule. In fact, the complaint was lodged by the complainant at Dhule. The complainant has twice attended the Court at Dhule. Instead of adducing evidence she has moved application for adjournment. She has refused to adduce evidence as observed by learned Judge in the order dated 23.01.2017. The case pending

before the Court of J.M.F.C., Dhule is not a private case filed by the applicant against the accused, so as to require her to attend each and every date fixed for hearing by the Court. On the contrary the case is instituted is on the basis of police report and applicant is required to attend the Court only for the purpose of adducing the evidence. The case is pending since 2014. In the case, besides the husband the members of the family appears to be made accused. There appears to be no bonafide on the part of applicant in filing such application. On the contrary the application appears to be filed with a malafide intention to protract the hearing before the trial Court. I am, therefore, not inclined to entertain the application. The application is rejected.

[V.L.ACHLIYA,J.]