

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

8 CRIMINAL APPLICATION NO. 1601 OF 2017

SARIKA W/O. PRAKASH PAWAR
VERSUS
PRAKASH S/O. NAMDEO PAWAR AND OTHERS

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Advocate for Applicant : Mr.Gaware Niteen V.
Advocate for respondent nos. 1 to 5: Mr. Vinod P.Patil.

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CORAM : P.R. BORA, J.
Dated: November 27, 2017

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PER COURT :-

1. Heard learned Counsel appearing for the parties.
2. The applicant has filed the present application seeking transfer of R.T.C. No.329/2015 pending on the file of the Judicial Magistrate, First Class, Court no.3, Shrigonda, district Ahmednagar, to the competent Court at Madha, district Solapur.
3. The applicant had lodged a report against the present respondents whereupon a criminal case has been registered against the present respondents for the offense punishable under Section 498-A read with Section 34 of IPC and the same is pending in the J.M.F.C. Court no.3 at Shrigonda.

4. Learned Counsel for the applicant submitted that on 20th of July, 2016, when the applicant had been to the Court at Shrigonda, she was threatened with her life by the respondents if she would depose against them. Learned Counsel submitted that after receiving such threats from the respondents, the applicant had preferred Transfer Application No.329/2016 to the Sessions Court at Ahmednagar, to transfer the proceedings from the Court of Judicial Magistrate, First Class, at Shrigonda, to the Court of the Judicial Magistrate, First Class at Madha, however, the learned Sessions Judge disposed of the said application for want of powers to transfer the proceedings from one district to another. Learned Counsel further submitted that even otherwise, it is most inconvenient for the applicant to attend the case pending in the Court at Shrigonda. Learned Counsel submitted that the father of the applicant is an old aged person and he cannot accompany the applicant to attend the Court at Shrigonda. Learned Counsel further submitted that the applicant cannot travel alone and has to be every time accompanied by at least one person which is becoming very expensive for her. Learned Counsel further submitted that the witnesses to be examined in the said case also are from the area of Madha and, in such circumstances, if the case pending

in the Court at Shrigonda is transferred to the Court of Judicial Magistrate, First Class, at Madha, it would meet the ends of justice.

5. Learned Counsel placed reliance on the judgment of this Court in the case of Vijay Sudhakar Patil Vs. Asha Vijay Patil (2014 (3) Bom.C.R. (Cri.) 206).

6. Shri V.P.Patil, learned Counsel appearing for the respondents, opposed the submissions made on behalf of the applicant. Learned Counsel submitted that a bare allegation without any supportive evidence is insufficient to accept the request of the applicant. Learned Counsel further submitted that a total false allegation is made against the respondents that they had threatened the applicant. Learned Counsel further submits that while transferring the case from one district to another, regard must be to protect the interest of both; the complainant as well as accused. Learned Counsel further submitted that in absence of any cogent reason, the application is liable to be rejected.

7. I have carefully considered the submissions advanced by the learned Counsel appearing for the applicant

and the learned Counsel appearing for the respondent. I have also perused the material on record. It is not in dispute that RTC No.329/2015 is the only case presently pending between the applicant and the respondent in the Court at Shrigonda. Since the applicant at the relevant time was residing at Shrigonda i.e. at her matrimonial house, and since the ill-treatment to which the applicant was subjected by the respondents, was at the said place, the applicant had lodged the report at the concerned Police Station at Shrigonda and, obviously, therefore, the chargesheet was filed in the Court at Shrigonda.

8. The allegation made by the applicant that she was threatened with life when she had been to the Court at Shrigonda to attend the concerned criminal case is of a serious nature. In the FIR lodged by the applicant also, there are serious allegations, including that of physical and mental harassment. As such, the apprehension in the mind of the applicant that she would not get fair trial if the matter is conducted at Shrigonda is difficult to be ruled out. Secondly, as has been rightly submitted by the learned Counsel for the applicant, the witnesses who are likely to be examined in the concerned criminal case, are majorityly from the area of Madha.

It would be convenient if these witnesses are not subjected to attend the Court at Shrigonda which is at a distance of more than 200 kms from Madha, and are required to attend the Court at Madha.

9. When a submission was made on behalf of the respondents that they would also be subjected to harassment and heavy expenses if the criminal case is transferred to the Court at Madha, in response to the submission so made, it was clarified by the learned Counsel for the applicant that the applicant will not insist the presence of each and every accused on every date and would not object for the application seeking exemption from personal appearance for such accused persons for genuine reasons. According to me, this was the only aspect which was likely to cause prejudice to the accused if the criminal case pending in the Court at Shrigonda is transferred to the Court at Madha. In view of the fact that the applicant has undertaken not to insist for personal attendance of all the accused unless it is felt mandatory by the Court, now there appears no difficulty in directing transfer of the criminal case pending in the Court at Shrigonda to the Court of Judicial Magistrate, First Class, at Madha. In view of the above, following order is passed:

ORDER

1. Criminal Application (No.1601/2017) is allowed. R.T.C. No.329/2015 is transferred from the Court of the Judicial Magistrate, First Class, at Shrigonda, (Court No.3) to the Court of Judicial Magistrate, First Class, at Madha, for its disposal in accordance with law. The Court of learned Judicial Magistrate, First Class, at Shrigonda, shall duly forward the entire proceedings to the Court of Judicial Magistrate, First Class, at Madha.
2. The parties are directed to appear before the Court of the Judicial Magistrate, First Class, Madha, on 11th of December, 2017.
3. Criminal Application No.1601/2007, thus, stands allowed.

(P.R. BORA, J.)

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