

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

CRIMINAL APPLICATION NO. 1997 OF 2017

1. Prasannasheel S/o Vishnupant Bhagat,
Age : 31 years, Occupation : Private Employment,
Residing at Swaraj Residency, Flat No. S-303,
Chikhli Road, Moshi, Taluka Haveli,
District Pune.
2. Mrs. Nirmala W/o Vishnupant Bhagat,
Age : 66 years, Occupation : Household,
Residence as above.
3. Vishnupant S/o Marotirao Bhagat,
Age : 73 years, Occupation : Nil,
Residing presently at above address.
4. Dr. Mrs. Utpala W/o Sushil Fale,
Age : 35 years, occupation : Medico,
Residing presently at C-4/14,
H.D.F.C. Colony, Taluka Haveli,
District Pune.
5. Sushil S/o Sevakram Fale,
Age : 39 years, Occupation and
Residence as above.

... Applicants

VERSUS

1. The State of Maharashtra,
Through the Commissioner of Police,
Aurangabad.
2. The Senior Police Inspector,
Jawahar Nagar, Aurangabad.
3. Mrs. Ashwini W/o Prasansheel Bhagat,
Age : 25 years, Occupation : Service,
Residing at Plot No. 201, Parichay Apartment,
Tilak Nagar, Aurangabad.
Flat No. 201

... Respondents

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Mr Hemant Surve, Advocate a/w Mr Kshitij Surve, Advocate for the
applicants
Mr S. J. Salgare, APP for respondent/State
Mr A. S. Kale, Advocate i/b M/s Talekar & Associates for respondent
No. 3
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CORAM : **S. S. SHINDE &
A. M. DHAVAL, JJ.**

DATE : **22.08.2017.**

ORAL JUDGMENT (Per S. S. Shinde, J.) :

. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties and taken up for final disposal at admission
stage.

2. This application is filed with following prayers:

- F. It be held and declared that the furtherance of Regular Criminal Case No. 1755 / 2017 pending on the files of the learned XXth Judicial Magistrate, First Class, Aurangabad for offences punishable under sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 would be a sheer abuse of process of law for lack of availability of territorial jurisdiction;
- G. Consequence thereof, the charge-sheet filed by P.S., Jawaharnagar bearing registration number I - 93 / 2017 dated 15.07.2017 for offences punishable under sections

498 - A, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 may kindly be ordered to be presented before the appropriate Court of Law having territorial jurisdiction;

. However, Shri. Surve, learned counsel appearing for the applicants, during the course of hearing, restricts the reliefs claimed in the instant application to the extent of prayer clause 'G' subject to granting him liberty to approach the competent court at Pune for presenting an application for discharge, in case the proceedings bearing Regular Criminal Case No. 1755 / 2017 pending on the files of the learned XXth Judicial Magistrate, First Class, Aurangabad for offences punishable under sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code, 1860, are transferred to the concerned court at Pune.

3. He submits that, when the entire cause of action has arisen at Pune, the court of XXth Judicial Magistrate First Class at Aurangabad has no jurisdiction to entertain the Regular Criminal Case No. 1755 / 2017. In support of his contention, he placed reliance on the judgment of the Bench presided over by the learned Single Judge of this Court in the matter of Shekhar Shivdas Mahire & Ors. Vs. Sou. Sarikabai Shekhar Mahire & Anr. reported in 2010 ALL MR (Cri) 1766.

4. Mr Kale, learned counsel appearing for respondent No. 3 submits that, since the applicants have confined the reliefs claimed in the application to the extent of prayer clause 'G', he has instructions from respondent No. 3 to make the statement that, she has no objection for transferring the proceedings Regular Criminal Case No. 1755 / 2017 pending on the files of the learned XXth Judicial Magistrate, First Class, Aurangabad for offences punishable under sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code, to the court of Chief Judicial Magistrate at Pune.

5. In light of the above submissions made across the bar and keeping in view of the judgment of this Court in the case of Shekhar Mahire (cited supra), we are inclined to allow this application in terms of prayer clause 'G'. Hence, the following order.

ORDER

- (i) Regular Criminal Case No. 1755 / 2017 pending on the files of the learned XXth Judicial Magistrate, First Class, Aurangabad for offences punishable under sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code, is transferred to the court of Chief Judicial Magistrate, Pune.

- (ii) The Court of CJM, Pune, as per the administrative instructions, may itself conduct the case or transfer the case forthwith to the concerned JMFC.
- (iii) Needless to observe that, the applicants are at liberty to tender an application for discharge before the concerned court on the grounds other than territorial jurisdiction.

Rule made absolute in the aforesaid terms with no order as to costs.

[A. M. DHAVALA]
JUDGE

[S. S. SHINDE]
JUDGE

sgp