

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

4 CRIMINAL APPLICATION NO.2044 OF 2017

PRAVIN S/O. VISHRAM BHADANE
AND OTHERS

.. Applicants

VERSUS

THE STATE OF MAHARASHTRA AND ANR

.. Respondents

...

Advocate for Applicants	:	Shri Ruchir S. Wani
APP for Respondent - State	:	Shri R.B. Bagul
Advocate for Respondent No.2	:	Shri Prakash S Paranjape

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CORAM : PR. BORA, J.

Dated: September 22, 2017

PER COURT :

1. Heard the learned Counsel appearing for the parties.
2. The applicants have filed the present application seeking transfer of three proceedings pending in the Court of 2nd Judicial Magistrate, First Class at Dhule & 4th Judicial Magistrate, First Class at Dhule to the competent Court at Nandurbar. The proceedings which are pending against the applicants in Dhule Court are :
 - (i) Criminal Misc. Application No.436/2016 filed by the wife of the present applicant no.1 under the provisions of Domestic Violence Act.

- (ii) Criminal Misc. Application No.434/2016 filed by the wife of the present applicant no.1 seeking maintenance under Section 125 of the Code of Criminal Procedure.
- (iii) Regular Criminal Case No.256/2016 for the offences punishable under Section 498-A, 406, 323, 504, 506 r.w. 34 of the Indian Penal Code.

3. Transfer of the proceedings from Dhule to Nandurbar is sought on two grounds. It is the contention of the applicants that, there is apprehension in the minds of the applicants that, if they attend the Court at Dhule, the respondents may cause physical harm to them. The learned Counsel for the applicants submitted that, in the past such attempt was made by the respondents and applicant no.1 was assaulted by respondent no.2. It is further contention of the applicants that, applicant no.1 has to look after his minor children and the old aged parents and in such circumstances, it is too difficult for him to attend the proceedings at Dhule. It was further contended that, applicant no.1 has filed two other complaints against respondent no.2 in the Court at Nandurbar, which would also require the attendance of respondent no.2. In the circumstances, according to applicants, if the proceedings pending between the parties in the Dhule Court are transferred to Nandurbar, it would be convenient for

respondent no.2 also.

4. The learned Counsel submitted that, an attempt was made by respondent no.2 of seeking transfer of Hindu Marriage Petition filed by applicant no.1 in the Court at Nandurbar to the Courts at Dhule by filing a writ petition before this Court. However, she could not secure any favourable order and the said writ petition came to be dismissed by this Court. The learned Counsel submitted that, in the said writ petition this Court has observed that, it may cause injustice for present applicant no.1 if the Hindu Marriage Petition is transferred from Nandurbar to Dhule since he has to look after his minor children as well as old aged parents.

5. Referring to the aforesaid observations, it was contended by the learned Counsel for the applicants that, the request of the applicants seeking transfer of the proceedings pending in the Court at Dhule to the Courts at Nandurbar was just. The learned Counsel relied upon the Judgement of the Hon'ble Apex Court in the case of **Jyoti Mishra Vs. Dhananjay Mishra, (2010) 8 Supreme Court Cases 803** to support his arguments.

6. Shri Paranjape, learned Counsel appearing for the

respondents opposed the submissions made on behalf of the applicants. The learned Counsel submitted that, no ground is made out by the applicants to justify their request. The learned Counsel further submitted that, the apprehension in the minds of applicants that, respondents would cause them physical harm if they attend the Court at Dhule is misplaced and without any evidence. The learned Counsel further submitted that, in fact it would cause greater hardship to respondent no.2 if the proceedings are transferred to the Court at Nandurbar. The learned Counsel, therefore, prayed for rejecting the application.

7. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. Emphasis of the learned Counsel for the applicants was on the observations made by this Court in the order passed in Misc. Civil Application No.180 of 2016 on 06.07.2017. As noted herein above, based on the observations made by this Court in the aforesaid order, it was sought to be canvassed that when respondent no.2 was to attend the Hindu Marriage Petition at Nandurbar, no prejudice would be caused to respondent no.2, if the proceedings filed by her or at her instance in Dhule Court are transferred to the Courts at Nandurbar.

8. I am, however, not convinced with the arguments so made. Only because the transfer application preferred by respondent no.2 to transfer the Hindu Marriage Petition filed by applicant no.1 in Nandurbar Court to Dhule Court is rejected, the proceedings initiated by her in Dhule Court one under the provisions of Domestic Violence Act, the second under Section 125 of the code of Criminal Procedure and third, the Regular Criminal Case registered on her complaint for the offences under Section 498-A, 406, 323, 504, 506 r.w. 34 of the Indian Penal Code cannot be transferred from Dhule to Nandurbar. Respondent no.2 cannot be subjected to take her witnesses to Nandurbar for adducing their evidence in the aforesaid matters filed by her or at her instance. That may cause greater prejudice to respondent no.2.

9. Insofar as apprehension expressed by the applicants that, respondent no.2 and her relatives may cause physical harm to them is concerned, the remedies are available for applicants to bring the said fact to the notice of the Court at Dhule and to seek necessary orders from said Court. Moreover, there does not appear much substance in the point so raised by applicant no.1 for the reason that, according to his own contention assault was made on him by respondent no.2 at Nandurbar where he is now seeking transfer of

the proceedings from Dhule.

10. The judgment relied upon by the applicants in the case of **Jyoti Mishra Vs. Dhananjay Mishra** (cited supra) may not apply to the facts of the present case. After having considered the entire material on record, I do not find any merit in the application so filed. Hence, the following order.

ORDER

1. The application is rejected.

(P.R. BORA, J.)