

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO.195 OF 2017
(Komal Sagar Duggad Vs. Sagar Vijayraj Dagdu)

Mr.Shaikh Md.Naseer, Advocate for the applicant.
Mr.P.B.Waghmare, Advocate for the respondent.

CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/12/2017

PER COURT :

1. The petitioner wife prays for transferring the HMP No.113/2017 filed by the respondent/husband before the learned Civil Judge, S.D. Dhule, to be transferred to the learned Civil Judge, S.D. Bhusawal.
2. I have considered the strenuous submissions of the learned Advocates for the respective sides.
3. The contention of the wife is that the husband has initiated the proceedings at Dhule, which is about 150 kms away from Bhusawal where she resides. A child of about 18 months, born out of the wedlock, resides with the wife. The wife has to travel by State Transport Bus to Dhule, which requires about 5 hours and it would take almost the entire day to visit Dhule and return back home after

the court hearing. An adult family member from her family has to travel alongwith her since the return journey to Bhusawal would occur after the court hours are over and it would became almost a night journey to reach Bhusawal.

4. She submits that though a case u/s 498-A of the IPC is registered at Dhule, considering the cause of action, she is not frequently required to visit Dhule for the said case as it is a case filed by the State against the respondent. Only when her presence would be required for recording of evidence, that she would be required to travel to Dhule.

5. The learned Advocate for the respondent has contended that if the applicant can travel to Dhule for the 498-A case, she can very well travel for attending the proceedings initiated by the husband. He finds it risky to travel to Bhusawal since he fears that further false cases would be registered against him as it would give the wife an opportunity to level false allegations against him.

6. Upon considering the contentions of the litigating sides and upon going through the petition paper book, it is apparent that if the petition filed by the husband at Dhule is not to be transferred, the

wife would have to visit Dhule for the said proceedings and which takes about 5 hours by the State Transport Bus. She can not be expected to carry her 18 months child alongwith her in such a journey since the return trip would be in the night hours. An adult member would have to travel alongwith her since she would require the protection of an adult male relative in such circumstances. Record also reveals that the case filed by the wife under the Domestic Violence Act is registered at Bhusawal and the husband travels to Bhusawal for the said case.

7. The Hon'ble Apex Court in the matter of Soma Choudhury Vs. Gourab Choudhury, (2004) 13 SCC 462 and in the case of Sumita Singh Vs. Kumar Sanjay, AIR 2002 SC 396 has concluded that the convenience of the wife has to be considered while transferring the proceedings. It cannot be ignored that if the husband is performing such duties in his employment which can not permit him to leave the place of employment to attend Court hearings, the said aspect could be considered. In the instant case, no such circumstances have been cited.

8. Considering the Law laid down by the Hon'ble Apex Court and keeping in view the factors recorded as above, this misc. application

is allowed in terms of prayer clause "B" which reads as under :-

“B. The HMP No.113/2017 filed by respondent before Civil Judge, S.D. Dhule may please be transferred to Civil Judge, Senior Division, Bhusawal in the interest of justice.”

9. It would be open to the husband to request the learned Civil Judge, S.D. Bhusawal, after transfer of HMP No.113/2007, to post the hearing in the said case on the same date on which Cri.Misc.Appl. No.71/2015 is posted for hearing before the Court at Bhusawal.

(RAVINDRA V. GHUGE, J.)