

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.35 OF 2016

PRASHANT ANANTRAO MISAL)...APPLICANT

V/s.

SMT.DEEPALI PRASHANT MISAL AND ORS.)...RESPONDENTS

Ms.Pranali Kakade i/b. Mr.Dilip Shukla, Advocate for the Applicant.

Mr.Sugandh Deshmukh, Advocate for Respondent Nos.1 to 3.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 4th JANUARY 2017.

P.C. :

1 This is an application under Section 407 of Code of Criminal Procedure (Cr.P.C.) filed by husband who is non-applicant in Miscellaneous Application no.172 of 2015 filed by respondent no.1 / wife before the learned Judicial Magistrate First Class, Khadki, Pune.

2 Heard learned counsel appearing for the applicant. She argued that because of pendency of matrimonial matter, the applicant has lost his job and he is also required to pay maintenance to his wife / respondent no.1 herein. It is further argued that respondent no.1 / wife is not doing any job and as a housewife she has ample time to attend the court if the proceedings are transferred from the file of learned JMFC, Khadki, Pune, to any court in Mumbai, where the applicant stays. The learned counsel further argued that by adopting such a course, time can be saved.

3 I have also heard the learned counsel appearing for respondent no.1 / wife. He argued that there is no material on record to show that contingencies as mentioned in Section 407 of Cr.PC. are established warranting transfer of the proceedings from the court of learned JMFC, Khadki, to the competent court at Mumbai.

4 Perused the contents of the application. It is seen that because of matrimonial dispute between the applicant / husband

and non-applicant / wife, a petition under the Protection of Women from Domestic Violence Act bearing number M.A.No.172 of 2015 is pending on the file of the learned JMFC, Khadki, Pune. The appeal arising therefrom is pending on the file of the Sessions court at Pune. Simultaneously, the applicant has also moved proceedings for restitution of conjugal rights which are stated to be pending before the Family Court at Bandra. By this application, proceedings from the court of learned JMFC, Khadki, Pune, are sought to be transferred to Mumbai. Section 407 of Cr.PC. provides for powers of this court to transfer proceeding from one court to another court and such powers are required to be exercised very sparingly and on showing that for conducting a fair and impartial inquiry or trial, there is necessity of transfer of proceedings. In the case in hand, averments in paragraph 15 of the application are to the effect that there is apprehension in the mind of the applicant and there are financial constraints and therefore the applicant is seeking transfer of proceedings. What is the exact nature of apprehension and how the applicant says that he will not get fair and impartial trial in the court of the learned

JMFC, Khadki, Pune, is not explained in the application. Financial constraints are also not reflected from the application. The proceedings under the Protection of Women from Domestic Violence Act are instituted by respondent no.1 / wife, who is a resident of Khadki, District Pune. It is not the case of the applicant that the court at Khadki is not having territorial jurisdiction to try the proceedings.

5 In this view of the matter, no case for transfer of proceedings from the court of the learned JMFC, Khadki, Pune, to Mumbai is made out.

6 The application is, therefore, rejected.

(A. M. BADAR, J.)