

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.25 OF 2017

Mr. Rushabh H. Zaveri and Anr.

...Applicants

vs.

Mrs. Ashmi R. Zaveri and Anr.

...Respondents

....

Mr. A.H. Ponda, i/b. Sainand V. Chaugule, for the Applicants.

Ms. Monisha Jagtap, a/w. Mr. Akshay Kapadia, i/b. J. Shekhar & Co., for the Respondents.

....

CORAM : S.C. GUPTE, J.

DATED : 2 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties

2. This Miscellaneous Civil Application seeks transfer of a criminal case filed by the Respondent wife before the Court of Metropolitan Magistrate, Girgaon under the Protection of Women from Domestic Violence Act, 2005 to the 7th Family Court, Bandra. The Respondent wife has initiated divorce proceedings before the 7th Family Court at Bandra being Petition No.A-2666/16. The application is on the footing that the issues involved in both the proceedings are mostly common and common evidence will have to be led in the two matters. If the two proceedings are allowed to be proceeded with before different forums, there is a likelihood of two conflicting verdicts by two different courts. The application is opposed by the Respondent wife on the

ground that the Family Court at Bandra does not have jurisdiction to decide all the matters, which are alleged in the criminal complaint. Learned Counsel submits that apart from the various allegations under different provisions of the Domestic Violence Act, there are allegations, which involve criminal offenses under the Indian Penal Code and, as such, the Family Court is not empowered to take cognizance of the same.

3. If one has regard to the criminal complaint filed by the Respondent wife, which is placed on record by the Applicant herein, the complaint is squarely under the provisions of the Domestic Violence Act. The complaint seeks an order of maintenance for the Respondent wife and her son, including interim maintenance. It seeks custody of the son to remain forever with her. It also seeks return of stridhan, jewelry and other belongings of the complainant and an injunction restraining the Applicant herein from creating any nuisance and from visiting the premises of the complainant. Merely because there are some allegations made in the complaint, which may independently amount also to offence/s under the Indian Penal Code, it cannot be said that this is a complaint regarding such offence/s. As held by the Supreme Court in the case of **Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari**¹, the very purpose of enacting the Domestic Violence Act was to provide a remedy to a complainant, which is in the nature of an amalgamation of civil rights of the complainant, who is a victim of domestic violence. The remedy provides a protection from the domestic violence and, at the same time, affords remedies in civil law. Our Court in the case of **Minoti Subhash Anand vs. Subhash Manoharlal Anand**²

1 II (2016) DMC (SC)

2 2015 SCC Online Bom 6113

has held that a criminal complaint under the Domestic Violence Act may very well be transferred to the Family Court, if there are matrimonial proceedings pending before the latter court involving common issues and evidence.

4. Based on this law and considering the averments made in the present Miscellaneous Civil Application and the rival stands of the parties, this Court is of the view that it will be in the interest of justice to transfer the pending criminal proceedings before the Metropolitan Magistrate, Girgaon to the Family Court at Bandra.

5. Accordingly, the Miscellaneous Civil Application is allowed in terms of prayer clause (a). The Family Court at Bandra shall hear the criminal complaint, together with the pending Matrimonial Petition. The Family Court shall decide the question of interim maintenance of the Petitioner/Complainant as expeditiously as possible and, in any event, within a period of two months from today. The Family Court shall also endeavour to decide the case finally within a period of one year from today.

6. The Miscellaneous Civil Application is disposed of accordingly.

(S.C. GUPTE, J.)