

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.99 OF 2017

Sonali Kaustubh Sashte ... **Applicant**

V/s.

The State of Maharashtra & Ors. ... Respondents

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Mr.Ravindra Sankpal i/b. R.V.Sankpal & Associates, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

Mr.J.S.Kapre, Advocate for the Respondent Nos.2 to 4.

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CORAM : A.M.BADAR J.

DATED : 19th APRIL 2017.

P.C. :

1 This is an application under Section 407 of the Code of Criminal Procedure, 1973 (“Cr.P.C.” for the sake of brevity) for transfer of Criminal Case No.I-230 of 2013 (RCC No.988 OF 2013) pending on the file of the Judicial Magistrate First Class, Vasai to the file of the learned Metropolitan Magistrate at Mumbai, moved by the first informant/wife.

2 Heard the learned Advocate appearing for the
applicant/first informant. He argued that the report lodged by the
applicant has resulted in filing of the charge-sheet against

respondents/accused persons and in all thirteen witnesses are cited by the prosecution. The learned Advocate further argued that witness Nos.1,4 and 6 are resident of Girgaon whereas witness No.7 cited by the prosecution is resident of Vasai. It is further argued that for each and every date of hearing the applicant is attending the Court of the J.M.F.C., Vasai, but her evidence is not being recorded. It is also pointed out that the applicant has filed an application under the provision of the Protection of Women from Domestic Violence Act, 2005 ("D.V.Act" for the sake of brevity) in the Court of Metropolitan Magistrate at Girgaon, wherein the respondents/accused persons are parties and, therefore, for general convenience of parties, it is necessary to transfer the Criminal Case pending on the file of the learned J.M.F.C., Vasai to the Court of Metropolitan Magistrate, Girgaon where proceedings under D.V.Act are pending.

3 The learned Advocate appearing for the respondents/accused persons vehemently opposed this application by contending that the Criminal Case pending on the file of the learned J.M.F.C, Vasai is a part-heard case wherein evidence of some of the witnesses is already recorded. He further argued that despite service of summons, the applicant/first informant failed to appear before the J.M.F.C., Vasai and as such, a warrant came to be issued against her and this has prompted her to initiate the instant proceedings before this Court. The learned Advocate for

respondent/accused further argued that the applicant may attend the Court of J.M.F.C. Vasai on any date and the Advocate for the respondents/accused will cross-examine her so that she may be discharged on the very same day instead of directing her to attend that Court time and again. The learned Advocate has placed reliance on affidavit-in-reply on affirmation of respondent No.3 Gajanan/original accused to buttress this contention.

4 The learned Advocate appearing for the respondents/accused undertakes to cross-examine the applicant/first informant as well as her relatives whenever they appear before the learned trial Magistrate for adducing their evidence and further makes a statement that accused persons will not seek adjournment for cross-examination of prosecution witnesses for any reasons. Statement, so made, is accepted.

5 I have carefully considered the rival submissions and also perused material made available on record. The applicant is wife of respondent No.2/original accused. She lodged a FIR against her husband and in-laws, which has resulted in filing of the charge-sheet against them for offences punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code ("IPC" for the sake of brevity). That is how Criminal Case bearing No.RCC No.988 of 2013 is registered and pending on the file of the learned J.M.F.C. at Vasai. This case is

sought to be transferred to the Court of Metropolitan Magistrate at Girgaon with an averment that the applicant is finding it difficult to attend the dates of hearing in the Court of J.M.F.C., Vasai, which is 15 km. away from Vasai Station and that she is staying at Girgaon with her parents and she is not having independent source of income.

6 As per provisions of Section 177 of the Cr.P.C., every offence is required to be ordinarily inquired into and tried by Court within whose local jurisdiction it is committed. In the case in hand, it is not in dispute that offences alleged against respondents/accused have been committed within the territorial jurisdiction of the learned J.M.F.C., at Vasai. Transfer of a Criminal Case from one Court is permissible on grounds enumerated in Section 407 of the Cr.P.C. General convenience of parties or witnesses is one of such grounds. That ground will have to be construed by keeping in mind the provisions of Section 177 of the Cr.P.C.

7 In the case in hand, it is sought to be urged by the learned Advocate appearing for the applicant that Criminal Case is not part-heard. Duly sworn testimony of respondent/accused Gajanan shows that the case is a part-heard case meaning thereby that the J.M.F.C. at Vasai had an occasion to record evidence of some of the witnesses and noted demeanor of witnesses examined

by the prosecution. It is further stated on affidavit that the applicant has failed to respond to the summons issued by the learned trial Magistrate, which has resulted in issuance of warrant against her. If that is so, then it cannot lie in the mouth of applicant that she is finding it difficult to attend dates of hearing at Vasai and in the wake of statement made in the application, I do not find any substance in the contention of the learned Advocate for the applicant that despite attendance of the applicant in the Court at Vasai her evidence is not recorded.

8 Be that as it may, the Criminal Case is instituted by State against accused persons wherein the applicant as well as her relatives cited as witnesses, who are residents of Girgaon. They are not supposed to attend each and every date of hearing as it is the prosecutor, who is in-charge of the trial. Their purpose can serve only when they attend the Court on the date fixed for recording their evidence. As such, one time attendance to the Court of J.M.F.C. at Vasai, which is having territorial jurisdiction over the offence lodged against the accused persons cannot be construed as inconvenience to the applicant or prosecution witnesses.

9 In this view of the matter, I find no merits in the contention of the learned Advocate for applicant that for general convenience of parties and witnesses, it is necessary to transfer the

Criminal Case out of jurisdiction of the trial Magistrate having jurisdiction over the offence, particularly when the same is a part-heard matter. Therefore, the order :

- (i) The application is rejected.
- (ii) However, the learned trial Magistrate is requested to see that evidence of applicant as well as her relatives is recorded on the date fixed for recording their evidence without adjourning the matter for any reasons including inconvenience or absence of the learned Advocate appearing for respondents/accused.

(A.M.BADAR J.)