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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 113 OF 2015**

Smt. Bhagyashree Balu More & Ors.	...	Applicants
vs.		
Balu Ganpati More & Ors.	...	Respondents

Mr. Sachin Ramrao Pawar for the Applicant.
Mr. Balu Ganpat More for Respondent no. 1- in person.
Mr. S. V. Gavand, APP for the State.

**CORAM : A.K. MENON, J.
DATE : 17th JULY, 2017**

P.C.:

1. By this application, the applicants seek transfer of Criminal Miscellaneous Application No.397 of 2013 from the Court of the Chief Judicial Magistrate, Osmanabad to the Judicial Magistrate, First Class, Morewadi, Pimpri, Pune. Pending the hearing of the application, the applicant has also sought stay of further proceedings at Osmanabad. The hearing of the application at Osmanabad came to be stayed by order dated 10th July, 2015. The respondent has argued in person. He was allowed to conduct this case in person by virtue of the recommendation of the Committee of Registry under Chapter IV-A(ii) of the Bombay High Court Appellate Side Rules.

2. The facts in brief are as follows : Applicant No.1 is the wife of respondent no.1. Applicant Nos. 2 and 3 are the daughter and son of applicant no.1 and respondent no.1. The applicants claims to be residing at Pune. The respondent no.1 works for gain in Osmanabad. The applicants have filed the proceedings against the respondents in the Court at Osmanabad under section 12, 17 to 20 and 23 under the provisions of Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act).

3. By this application they seek transfer of Criminal Miscellaneous Application No. 397 of 2013 (Cr.MA) pending before Chief Judicial Magistrate, Osmanabad to Pimpri, Pune to be heard along with Criminal Complaint No.39 of 2014 filed before the the Judicial Magistrate, First Class, Morewadi, Pimpri, Pune. Applicant No.1 and Respondent No.1 are married since 1991. It is contended that various gold ornaments had been given by parents of applicant no.1 as Dowry. The respondent was in military service and after pre-mature retirement he has been appointed as a constable in police department. The allegations are of ill treatment, abuse and regular humiliation of applicant no.1 by respondent no.1. Despite such ill treatment, applicant no.1 continued to reside with respondent no.1 keeping in mind the future of the children. According to applicant no.1 the respondent was addicted to alcohol and had developed illicit relations with another lady and when the applicant no.1 enquired in this respect, respondent no.1 would beat her and threatened to divorce her. On 7th October, 2012 after altercation respondent no.1 had beaten

applicant no.1 and evicted the applicants from the house. Thereafter the applicants filed a complaint before the Superintendent of Police, District Collector and to the Women's Redressal Forum, Osmanabad. The respondent no.1 had appeared and assured the authorities that he would take the applicants back to his house and would treat them well. However, he did not keep his promise. The applicants have been residing at applicant no.1's parents home since then the applicant had to suffer physical and mental harassment in the hands of the respondent and since respondent had deserted her she was compelled to file Criminal Application before the Magistrate Court at Osmanabad.

4. On behalf of the applicant-wife, it is contended that since she is totally dependent upon her parents and despite numerous attempts, the applicant has not been able to go back to her matrimonial home since the respondent had threatened to kill her. She had ultimately gone to the police to file a complaint against respondent no.1. The police declined to register her complaint since the respondent no.1 is one of their colleagues. In view of the threats held out, the applicants claim that they were compelled to change the residence. The applicant was jobless without any source of income. The applicant nos. 2 and 3 were studying in semi english medium school and the applicant no. 1 is unable to travel outdoor without someone accompanying her. It is therefore contended that the Cr.MA be transferred from Osmanabad to Pune. The transfer was necessary since the applicant no. 1 would have to ask her father who is the only

earning member to travel with her to Osmanabad. Moreover there was a serious apprehension that the respondent would assault her and humiliate her during their visits to Osmanabad to attend to the aforesaid proceedings. According to the Counsel for the applicant, the parents of the applicant no. 1 are unable to accompany her to Osmanabad. Therefore, the applicant is not in a position to attend the Court of Osmanabad. The applicant has also contended that it is not possible to bear the expenses of traveling and accommodation at Osmanabad for the purpose of attending and for this reason also the case is required to be transferred.

5. In the course of hearing before this Court vide order dated 3rd March, 2017, this Court had directed parties to produce on record documents showing the fact as to where applicant nos. 2 and 3 were being educated. However, the applicants have failed to produce any document pertaining to the place at which the children were studying presently.

6. On behalf of the respondent-husband an affidavit in reply was filed on 26th September, 2016 in which he has contended that the first applicant has filed M.A. No. 39/2013 under Section 125 of the Criminal Procedure Code before the Court at Pimpri, Pune on or about 21st June, 2013 in which in an affidavit it has been stated that they are residing under the care of one Mr. Sudhakar Raosaheb Pawar at Arun Constructions, Anand Park, Pimpale Gurav Pune-27. However, around a month later she has also filed application M.A. No. 397/2013 at

Osmanabad on 16th July, 2013. Respondent has further contended that in the proceeding before the Chief Judicial Magistrate at Osmanabad under the DV Act the applicant was residing at address Village Dharur, Taluka and District Osmanabad which establishes that the applicant is resident of Osmanabad and not Pune.

7. The respondent – husband has filed H.M. Petition No. 106/2013 under Section 9 of the Hindu Marriage Act before Civil Judge Senior Division, Osmanabad since the parties are residents of village Wadgaon Siddheshwar, Taluka and District Osmanabad. In the said H.M. petition the Court had issued notice to the applicant through the Court at Pimpri for service upon the applicant herein at the address mentioned in her Section 125 complaint filed in Pimpri. The police report records that the applicant was not found at the address given and no information was given about them. Meanwhile in the proceedings in Cr.MA No. 397/2013 filed by the applicant the Magistrate called for a report from the protection officer who reported some instances of domestic violence did occur, some incidence at Village Wadgaon, Taluka and District Osmanabad where the respondent had his residence. The applicant was residing in fact at village: Dharur Taluka : Osmanabad. Therefore both the applicants as well as respondent's addresses fell within the jurisdiction of the Osmanabad Court. It is therefore contended for the grant of maintenance a party should not be permitted to approach different Courts.

8. It is case of the respondent that although the applicant did not reside at the Pimpri, Pune address, they have filed this application only for the purpose of harassing the respondent and to obtain additional monetary reliefs from different Courts. On 26th October, 2015 the respondent filed Criminal Revision Application no. 181 of 2015 as per provisions of Section 397 of Criminal Procedure Code challenging the jurisdiction of JMFC, Pimpri and states that JMFC Pune has no territorial jurisdiction to try M.A.No. 39/2013 under Section 125 proceedings. Meanwhile in the Hindu Marriage petition filed by the respondent-husband under Section 9 of the Act, the applicant no.1 filed a memo of address in which the residential address is shown as Village, Dharur, Taluka: Osmanabad. The HM petition came to be decided and decreed on 7th September, 2015 granting a decree of restitution of conjugal rights against the applicant no.1 to be complied within two months of the decree. It is contended applicant and respondent lived together at Osmanabad and there was no occasion to file the application at Pune and the application at Pune is filed for harassment.

9. The respondent has filed a written submission. While arguing in person he submitted that in the Section 125 proceedings, after hearing parties the applicant wife was granted Rs.5000/- per month as interim maintenance which the respondent has been paying without any default. He further submits in the HM Petition the notices sent to Pimpri by order of the CJSD Osmanabad had been returned unserved. The respondent was required to advertise the same in the daily newspapers "Prabhat" in Pune city and "Dainik Sangarsh" in Osmanabad

district. After publication of the notice the applicant no.1 filed a memo of address in which her residential address shown as Village Dharur, Taluka and District Osmanabad where they are actually residing. It is case of the respondent that the applicants are actually residing at the first applicant parents House at Village Dharur, Taluka and Dist. Osmanabad and not at Pune.

10. The application seeking transfer to Pune is based on false statements and address provided at Pune is actually address of one Arun Constructions and not a residential address. The case is therefore to be tried at Osmanabad. Furthermore, the respondent also submitted that after the H.M. petition was allowed the applicant filed Appeal No. RCA/135/2015 in the District Court, Osmanabad and this appeal came to be dismissed pursuant to which respondent has moved an execution application. The respondent submits that he is ready to cohabit with the applicant and that there is no merit whatsoever in the transfer application. In the course of submission respondent has filed the newspapers evidencing publication of notice in the H.M. petition. He has also submitted that he is not engaged in any act of domestic violence and that it is evident from the judgment dated 19th April, 2016 passed by the District Judge, Osmanabad in Civil Appeal No. 135/15 that attempts were made at re-union with the intervention of first applicant where a compromise was reached. However, after compromise, the applicant had not co-operated and had failed to comply with the decree of restitution of conjugal rights.

11. I have heard the parties at length and perused the relevant pleadings. The applicant had in the course of the transfer application alleged that the respondent husband was having an extra marital affair and was an alcoholic but the appeal Court found that these were nothing but bald allegations. The judgement in the appeal records that respondent made bonafide attempts to bring back his wife with the help of the redressal forum but to no avail. It was also found that the respondent had invested monies in the applicants name in Post Office and Banks. The Court found there is no perversity in the decree passed for restitution of conjugal rights. The appeal was dismissed. I find that the respondent has also filed further evidence by way of Maharashtra State Legislative Assembly final electoral roll published on 21st January, 2017 from which it can be seen that the names of the applicant no. 1 and respondent appear on the same page and the polling Center is shown as Wadgaon, Osmanabad. Copies of the Aadhar Card's issued to the applicant nos. 2 and 3 minor children daughter and son both show their address as Wadgaon, Osmanabad, Maharashtra. In the circumstances, in my view, there is sufficient evidence on record to establish that the applicants have continued to use their address as Osmanabad and not at Pune. It is also pertinent to note that the Cr.M.A. has been filed on 16th July, 2013 about a month after filing MA/39/2013 under Section 125 of the Cr.PC. In the Cr.M.A. the address given is that of Osmanabad. In the circumstances, it is further evidence to show that the claims of the applicant no.1 is questionable.

12. In the circumstances, there is no substance in the contention that the applicant no.1 is unable to attend the Court at Osmanabad. There is overwhelming evidence against the applicant no. 1 and the transfer application has no merit. I therefore pass the following order :

- (i) The application is rejected.
- (ii) Interim stay granted on 10th July, 2015 stands vacated.
- (ii) In view of the disposal of the application Criminal Application No. 783 of 2016 does not survive. The same is also dismissed.

(A. K. MENON, J.)