

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.139 of 2016

Shri.Vaibhav Baburao Bharmal & Ors. ... **Applicants**

V/s.

Smt.Vandana Vaibhav Bharmal & Anr. ... **Respondents**

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Mr.M.J.Bhatt, Advocate for the Applicants.

Mr.Mihir Raut i/b. Mr.Nitin P. Deshpande Advocate for Respondent No.1.

Mr.A.A.Takalkar, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 9th JANUARY 2017.

P.C . :

1 Heard learned counsel appearing for the applicants. He argued that in the domestic violence case pending on the file of the learned Judicial Magistrate First Class, Court No.4, Pune, non-applicant No.1 wife has added her husband, married sister of her husband and other relatives of husband as non-applicants. The learned counsel further argued that the Court is insisting for presence and attendance of all non-applicants before it. The learned counsel further argued that non-applicant No.1/wife has also filed a FIR against her husband and relatives of her husband with Pantnagar Police Station resulting in registration of Crime

No.346 of 2015 for offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code and the learned Metropolitan Magistrate dealing with this FIR will have jurisdiction to try the case under the Protection of Women from Domestic Violence Act, 2007 (In Short, “the Domestic Violence Act”). He, therefore, prays that Criminal Miscellaneous Application No.5535 of 2015 pending on the file of the learned Judicial Magistrate First Class, Court No.4, Pune be transferred to the Court of Metropolitan Magistrate, Vikroli, Mumbai.

2 The learned counsel for the non-applicant submits that he has no instructions in the matter.

3 I have carefully considered the submissions made by the learned counsel for the applicants. It is seen that the non-applicant No.1/wife has filed an application under Section 12 of the Domestic Violence Act against her husband and his relatives i.e. present applicants for claiming relief under Sections 18, 19, 20 and 21 of the said Act. Perusal of the application shows that reliefs such as maintenance of Rs.30,000/-, accommodation, compensation etc. are claimed by filing an application under Domestic Violence Act. It is quasi-criminal proceedings wherein relief can be granted to the applicant on proof of domestic violence. The applicant has filed this proceedings in the Court of the learned Judicial Magistrate First Class, Court No.4, Pune as she

is resident of Sambhajnagar, Dhankavadi, Pune following under the territorial jurisdiction of the learned Judicial Magistrate First Class, Pune.

4 Powers of this Court under Section 407 of the Code of Criminal Procedure to transfer a case from one Court to another can be exercised by this Court, if this Court is of the opinion that for a fair and impartial inquiry or trial, the case needs to be transferred or that some question of law of unusual difficulty is likely to arise. It is not pointed out that the Court at Pune has no territorial jurisdiction to try the proceedings under the Domestic Violence Act. No case for exercise of power under Section 407 of the Code of Criminal Procedure is made out and proceedings cannot be transferred only because husband and his relatives are resident of Mumbai and not of Pune.

5 The registration of FIR at Pantnagar Police Station at the instance of non-applicant No.1/wife is not relevant for the purpose of relief claimed in the instant application.

6 The applicant in the proceedings under the Domestic Violence Act is wife and her convenience will have to be kept in mind rather than convenient of her husband and in-laws. Being non-applicants in the proceedings under the Domestic Violence Act, it is the choice of the applicants before this Court either to

attend the Court or to suffer consequences of non-attending the Court where the proceedings under the Domestic Violence Act is pending.

7 In the result, the application is devoid of substance and the same is dismissed.

(A. M. BADAR J.)