

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.80 OF 2018

Rakesh Jaiprakash Singh ... **Applicant**

V/s.

Kajal Rakesh Singh & anr. ... **Respondents**

Ms.Sweta Agarwal for the applicant.

Mr.Jilajit Sharma for respondent no.1.

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

CORAM : A.M.BADAR J.

DATED : 19th September 2018.

P.C. :

1. This is an application by the applicant/husband for transfer of proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short, "the DV Act") filed against him by his wife i.e. respondent no.1 which are pending on the file of the learned JMFC, First Court, Kalyan at Thane. The applicant/husband wants those proceedings to be transferred from the Court of JMFC, Kalyan to Court of Metropolitan Magistrate, Borivali, Mumbai.

2. Heard the counsel appearing for the applicant/husband. She argued that the applicant is suffering from cancer and has Stoma Bag attached to his abdomen for life time for passing urine. The employer of the applicant has even permitted the applicant to work from the house itself. In such circumstance, it is not possible for him to travel from Kandivali to Kalyan. The learned Counsel further argued that undisputedly respondent no.1/wife alongwith two daughters of the couple are staying in the house of the applicant/husband at Kandivali itself and therefore the proceedings under the DV Act needs to be transfered to the Court of Metropolitan Magistrate at Borivali which is at the distance of one and half kilometers from the place of residence of both parties.

3. The learned Counsel for respondent no.1/wife opposed the application by contending that the applicant is a drunker and under intoxication he is in habit of throwing out the respondent/wife out of matrimonial house. Parents of the respondent/wife reside at Kalyan and therefore she has filed proceedings under the DV Act at Kalyan. The learned Counsel for respondent no.1 / wife further argued that there is no progress of the proceedings at the Court at Kalyan and even application for maintenance is not yet decided in that Court. Therefore, according to the learned Counsel appearing for the respondent/wife, the application deserves to be rejected.

4. I have considered the submissions so advanced and perused documents annexed to the application. In paragraph 4 of the application, the applicant/husband has pleaded thus;

“...It was during this period that the Applicant was diagnosed with Carcinoma Urinary Bladder and he had to undergo major treatment with Kokilaben Dhirubhai Ambani Hospital where he had undergone a major surgery of Laparoscopic (Robotic Assisted) Radical Cystectomy with Ileal Conduit on 1st April, 2016 and Stoma Bag has been attached to his abdomen, which is for lifetime for passage of urine.”

5. Discharged card issued by Kokilaben Dhirubhai Ambani Hospital is annexed to the application. It shows that the applicant is suffering from Carcinoma Urinary bladder and he has undergone treatment for this ailment. It is seen from the discharge card that Stoma was created and Ileal loop was brought out through it and Robot was undocked. This Stoma was fixed to the abdominal sheath. Thus, the averments made in the application regarding ailment suffered by the applicant due to which his inability to move are duly corroborated by the documents of the medical treatment of the applicant placed on record.

6. On this backdrop and particularly in paragraph 5 of the

application, the applicant has categorically averred that the respondent/wife is residing in his house at Kandivali with their two daughters. This fact can also be vouched from the reply to Exh.7 filed by the respondent/wife in Criminal Application No.59 of 2016 pending on the file of the learned JMFC, Kalyan. In this reply, the respondent/wife has pleaded that she is residing with the present applicant in the house at Kandivali, Mumbai.

7. It is reported that for travelling from Kandivali to Kalyan where the proceedings under the DV Act is pending, time about three hours is required whereas from Kandivali to Borivali one can travel within a short span of time and distance is not more than two kilometers. General convenience of the parties is one factor which is required to be considered while deciding such application. In the case in hand, the applicant is virtually disabled person who cannot move because of cancer and attachment of Stoma Bag to his abdomen for passing urine. The respondent/wife is residing with the applicant at Kandivali itself. Hence, both parties can conveniently attend the Court of Metropolitan Magistrate at Borivali for getting the proceedings under the DV Act decided. In this view of the matter, the following order;

:: ORDER ::

- (i) The application is allowed.

(ii) Record and Proceedings in case no.PWDVA.59/16 between parties pending on the file of the learned JMFC Kalyan are transferred to file of the learned Metropolitan Magistrate Borivali Mumbai.

(iii) The learned Metropolitan Magistrate Borivali Mumbai where the proceedings are transferred shall issue fresh notice of hearing to both the parties and shall decide the application in accordance with law.

(iv) The application is disposed of accordingly.

Vina
Arvind
Khadpe

Digitally
signed by
Vina Arvind
Khadpe
Date:
2018.09.23
14:39:39
+0530

(A.M.BADAR J.)