

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 88 OF 2017**

Mrs. Arti Vishal Jadhav

....Applicant.

Vs.

Mr. Vishal Vilas Jadhav & Ors.

....Respondents.

Mr. Prosper D'Souza for the Applicant.

Mr. Anup Lahoti for Respondent Nos. 1, 2, 4 and 5.

Ms. V.S. Mhaispurkar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 26th MARCH, 2018.

P.C.:-

This is an Application for transfer of RCC No.402898 of 2014, pending on the file of Judicial Magistrate, First Class, Court No. 2, Pune, to the Court of Judicial Magistrate, First Class, Thane for trial and final disposal.

2 Heard the learned counsel for the respective parties and perused the record.

3 The learned counsel for the Respondent Nos. 1, 2, 4 and 5 vehemently opposed the Application. He submitted that, the said RCC No. 402898 of 2014 is arising out of CR No. 59 of 2014, registered with Pharaskhana Police Station, Pune City under Sections 498-A,

406, 323, 504, 506 r/w 34 of the Indian Penal Code on the basis of the report filed by the Applicant herself. He submitted that, it is the prosecution launched by the State and not by the Applicant as a private Complainant and therefore, the presence of the Applicant on each and every occasion is not necessary. He submitted that, at the most, the Applicant will have to attend the Trial Court, at Pune on 2 or 3 occasions, which will not cause any hardship or inconvenience to her and therefore, the prayer of the Applicant may not be entertained. He, therefore prayed that, the present Application may be dismissed.

4 It is by now the settled position of law that, an offence under Section 498-A of the Indian Penal Code being a continues offence, the wife can lodge the First Information Report within the jurisdiction of the place where she resides at the matrimonial home or where she resides with her parents or has taken shelter at a place after she is forced to leave the matrimonial house.

At the outset, it is to be noted here that the record clearly indicates that the Applicant being first informant had initially approached Murbad Polie Station, Taluka Murbad, District Thane on 25th March, 2014 and had lodged the First Information Report. That, the Murbad Police Station instead of appreciating the settled legal

position that, the wife can lodge the First Information Report allegedly under Section 498-A read with other allied Sections of Indian Penal Code, where she is residing at her parents house and after lodging the crime, instead of investigating it by themselves, transferred the said crime to the Pharaskhana Police Station for investigation. The Pharaskhana Police Station, Pune has thereafter registered the present crime with their Police Station on 26th March, 2014 and has investigated the same. The Pharaskhana Police Station has thereafter submitted final report in the Court of Competent Jurisdiction. The learned Magistrate after taking cognizance of the said Complaint, has now numbered it as RCC No. 402898 of 2014.

5 The record further indicates that, the Divorce Petition No. PA 633 of 2014, filed by the Respondent No.1 husband before the Family Court No.5 at Pune was transferred from the said Court to the Family Court at Thane by an Order dated 22nd June 2017, by this Court, passed in Miscellaneous Civil Application No. 59 of 2017 filed by the Applicant herein. The record further indicates that, the Miscellaneous Application No. 4 of 2014 filed by the Applicant under Section 12 and other related provisions of the Protection of Women from Domestic Violence Act, 2005 has also been transferred from the

Court of Judicial Magistrate, First Class, Murbad to the Court of Judicial Magistrate, First Class, Thane by an Order dated 2nd April 2015, passed by the learned District and Sessions Judge, Thane.

6 The record clearly indicates that, after the Applicant was driven away from her matrimonial house, is now residing at Thane. Undoubtedly, it would cause undue hardship and inconvenience to the Applicant in attending the Court of Judicial Magistrate, First Class, Pune on each and every occasion, for the trial of the said RCC No.402898 of 2014. As noted earlier, the other two proceedings, which were pending in the Family Court at Pune and Judicial Magistrate First Class, at Murbad have already been transferred to the Family Court at Thane and to the Court of Judicial Magistrate, First Class, Thane, respectively as afore-stated. If the present proceedings i.e. RCC No. 402898 of 2014 is transferred to the Court of Judicial Magistrate, First Class, Thane no inconvenience, hardship and/or prejudice would be caused to the Respondents herein, who are otherwise also attending the aforesaid Court proceedings at Thane. The reasons for transferring the Divorce Petition No. PA 633 of 2014 filed by the Respondent No.1 husband from the Family Court at Pune to the Family Court at Thane have been elaborately enumerated by

this Court in its Order dated 22nd June, 2017 and the said Order till date holds the field.

7 In view of the above, the following order-

- i) The RCC No. 402898 of 2014 pending on the file of Judicial Magistrate, First Class, Court No.2, Pune is hereby transferred to the Court of Judicial Magistrate, First Class, Thane. The learned Principal District and Sessions Judge, Thane, is hereby directed to allot the said case to the concerned Judicial Magistrate, First Class, for its further hearing.
- ii) The learned Judicial Magistrate, First Class, Court No.2, Pune is hereby directed to transmit the papers of the said RCC No.402898 of 2014 to the office of the Principal District Judge, Thane by following due procedure. The said be done within a period of 3 weeks from the date of receipt of the present order.
- iii) The Judicial Magistrate, First Class, Thane is hereby directed to make an endeavour to dispose of the said RCC No. 402898 of 2014, as expeditiously as

possible and within a period of one year from the date of receipt of the papers of the said case to its Court.

- iv) The Judicial Magistrate, First Class, Thane is directed to consider the Application for exemption to be filed by the Respondent No.2- the mother-in-law, on its own merits.
- v) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)