

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.93 OF 2018

Rahul Yadavrao Bhamare and ors. ... **Applicants**

V/s.

Ashwini Rahul Bhamare @

Ashwini Prakash Nagrale & Anr. ... **Respondents**

Mr.Samarth Raju Moray for the applicant.

Mr.Amol Gatne for respondent no.1.

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

CORAM : A.M.BADAR J.

DATED : 26th SEPTEMBER 2018.

P.C. :

1. This is an application under Section 407 of the Criminal Procedure Code by the respondents in the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, “the DV Act”) filed by the wife/aggrieved person. Said proceedings bearing no.195 of 2017 pending on the

file of the learned JMFC Shindkheda which sought to be transferred to the file of the learned JMFC, Panvel.

2. Heard, the learned Counsel appearing for the applicant. He argued that in presence of the Police Inspector in conciliation proceedings, respondent/wife who happens to be Sales Tax Officer serving with the State had slapped applicant no.1 / husband. It is further argued that other relatives of respondent no.1/aggrieved person has assaulted relatives of the husband in the Office of the Superintendent of Police for which appropriate action is taken. Applicants were required to move an application for police protection before the Superintend of Police, Dhule. In fact police protection was granted to the applicants on some occasions. With this, it is argued that when the applicants used to attend the concerned Court at Sindkheda which happens to be native place of respondent/wife, lot of her relatives used to gather there and create charged atmosphere giving the applicants herein apprehension that fair and proper trial may not be granted to them at Sindkheda.

3. The learned Counsel for respondent no.1 opposed the application by contending that the learned JMFC Sindhkhedha had issued notice only against respondents no.1, 3 and 4 in the proceedings under the DV Act and as such the application framed and filed is not maintainable as some other persons are also shown as applicants in the instant application. It is further argued that the paternity of child was questioned in the conciliation proceedings which was the reason for the untoward incident happened there at. With this, the learned Counsel for the respondent/aggrieved persons prayed for rejection of the application.

4. The application under Section 12 of the DV Act can be filed by the aggrieved persons at the place of her resident or business. This is clear from reading of Section 27 of the Protection of Women from Domestic Violence Act, 2005. At the same time, assurances of fair trial is the first imperative of dispensation of justice and central criterion for the Court to consider when a motion for transfer is made. As the motion, if found hyper sensitive needs to be rejected. However, in the case in hand, order

sheet maintained by the police officer reflecting progress of conciliation in the matrimonial disputes shows that during conciliation proceedings, the respondent/wife had slapped hard on cheek of the applicant no.1/husband and then there was quarrel between the parties. Report of non cognizable case filed by the applicant no.1/husband with the concerned police station shows that he as well as his relatives were beaten by the respondent/aggrieved person and her relatives. The complaint to that effect was also made immediately by mother of the applicant no.1/husband to the Superintendent of Police and similar complaint was also made by applicant no.1/husband with the Superintendent of Police, Dhule.

5. Shindkheda is the native place of respondent no.1/wife. Averments in the application are to the effect that a lot of relatives of the respondent / wife gathers in the Court at the time of hearing of the application giving sense of insecurity to the applicants. At the same time, it is not disputed that the respondent/wife serving as Sales Tax Officer at Dhule. Hence, interest of justice could be served by transferring the proceedings

under Section 12 of the DV Act from the file of the learned JMFC, Sindkheda to the Court of the learned JMFC Dhule where reportedly the complaint case initiated by the applicant no.1/ husband in respect of the alleged incident which took place on 30th November, 2017 at the conciliation cell of the police department, is pending. It would be convenient for the respondent/aggrieved persons to attend her proceedings at Dhule. In the result, the following order;

::ORDER::

- (i) Miscellaneous Application bearing No.195 of 2017 pending on the file of the learned JMFC Sindkheda between the parties is transferred to the Court of the learned JMFC Dhule.
- (ii) The application is disposed of with this order.

Vina
Arvind
Khadpe

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signed by
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(A.M.BADAR J.)