

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.339 OF 2017

Sunder Hasmatrai Shahani and another	Applicants
versus	
Deepika Kamal Shahani and another	Respondents

Mr.Abhijeet Kadam i/by Vaibhav R. Gaikwad for applicants.
Mr.Ajinkya Udane i/by Sanjay Bhojwani for respondent no.1.
Mr.Swapnil S. Pednekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd January 2018

PC :

1. The applicants are seeking transfer of Criminal Miscellaneous Application No.432 of 2013 pending in the Court of Judicial Magistrate, First Class, Cantonment Board, Pune to a corresponding Court at Mumbai.

2. The respondent no.1 had initiated the proceedings under the provisions of The Protection of Women from Domestic Violence Act, 2005 ('D.V.Act'). The respondent no.1 is the wife of one Kamal Sahani, who died on 15th October 2015. The applicants are the parents of deceased Kamal Sahani. The aforesaid application was filed by respondent no.1 in 2013.

3. Learned advocate for the applicants submitted that the applicants are aged about 81 and 69 years old respectively and suffering from various ailments. It is submitted that on account of

their age and condition of health, it is difficult for them to attend the proceedings in the aforesaid Court at Pune. It is further submitted that there are no allegations against the applicant in the proceedings initiated by respondent no.1 and they were implicated with a view to cause harassment to them. The applicants' son has expired. The respondent no.1, however, continued to prosecute the applicants in the said proceedings. It is further submitted that the applicants are willing to compensate the respondent no.1 by providing allowance for attending the proceedings. It is submitted that the cause of action had also arisen at Mumbai as the couple had stayed in Mumbai for three years after marriage and thereafter shifted to Jakarta in Indonesia. There were matrimonial differences between the couple. It is submitted that the applicants had not resided with the couple when they were cohabiting at various places abroad including at Jakarta, Indonesia and the applicants continued to reside at Mumbai. The respondent no.1 filed the Hindu marriage petition under Hindu Marriage Act for dissolution of marriage, which became infructuous on account of death of the husband. He, therefore, submitted that in the interest of justice, the proceedings which are pending in the Court at Pune, may be transferred at Mumbai.

4. Learned counsel for the respondent no.1 submitted that the proceedings are initiated in the Court at Pune since the cause of action had arisen for initiating the said proceedings within the jurisdiction of the said Court. It is submitted that since 2013, the said proceedings are pending in the said Court. It will be difficult for the respondent no.1 to visit Mumbai to attend the said proceedings. It is stated that the respondent no.1 has a daughter aged about

thirteen years and is studying in school and attending the proceedings at Mumbai would cause grave hardship to respondent no.1 and her daughter. It is submitted that the presence of applicants is not required on every date of hearing and that the Trial Court has always accommodated the applicants during the course of proceedings. The learned advocate for respondent no.1 submitted that the respondent no.1 shall not insist upon the presence of the applicants on every date of hearing, unless the same is required in accordance with law. It is submitted that respondent no.1 being a woman, will have to face lot of hardships in attending the said case at Mumbai. The respondent no.1 has also filed reply to this application opposing the grant of relief. The respondent no.1 has denied the submissions advanced at the instance of applicants. It is also stated that the respondent no.1 is single mother looking after the thirteen years old daughter, who is required to be dropped to school every day and is also required to pick her up from the school. She is also required to monitor her daughter's other daily activities.

5. I have perused the documents on record. Heard rival contentions as stated hereinabove. The proceedings are pending in the Court at Pune since 2013. The proceedings are initiated by respondent no.1 under D.V.Act. It is true that the applicants are senior citizens and are required to attend the proceedings at Pune. However, their presence may not be necessary on every date of hearing. They are represented by an advocate. The respondent no.1 has stated that their presence will not insisted upon before the Trial Court unless it is required. The respondent no.1 is single mother looking after thirteen years old daughter, who is studying at Pune. Whether there is sufficient material against the applicants for

initiating proceedings against them under D.V.Act, will be the subject matter of the said proceedings, which will be dealt with in accordance with law by the Trial Court at Pune and it is not proper to make any observations on the merits of the said case in this application. In the facts and circumstances of the case, it is not possible to accede to the prayers of the applicants to transfer the proceedings at Mumbai Court. Hence, I pass following order :

ORDER

- (i) Criminal Application No.339 of 2017 is rejected;
- (ii) The Trial Court at Pune shall not insist on presence of the applicants on every date of hearing, unless it is required in accordance with law;
- (iii) Intrim order stands vacated;
- (iv) Criminal Application No.339 of 2017 is disposed off.

(PRAKASH D. NAIK, J.)

MST