

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.481OF 2017

Maahi w/o. Kunal Kalra ... **Applicant**

V/s.

Kunal s/o. Ashok Kalra & ors. ... **Respondents**

Mr.Shyam Dewani a/w Mr.Chirag Chanani i/b. Dewani and Associates for the applicant.

Ms.Shubhada D. Khot a/w. Mr.Umesh S. Iyer & Ms.Aditya Lasariya for respondents.

Ms.Anamika Malhotra, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 30th JULY 2018.

P.C. :

1. This is an application filed under Section 407 of the Criminal Procedure Code for transfer of Criminal case bearing no.PW/1214/2017 between parties pending on the file of the learned Additional Chief Metropolitan Magistrate, Bandra to the Court of the competent Jurisdiction at Nagpur. The application is moved by the first informant / Wife.

2. Heard the learned Counsel appearing for the applicant/the first informant at sufficient length of time. He argued that respondents no.1 to 3 / accused are influential persons and because of their influence, even the investigation was not conducted in proper manner. The first informant is required to take steps for further investigation of the crime in question. The learned Counsel further argued that almost all witnesses are from Nagpur and therefore for the convenience of parties makes it necessary to transfer criminal case from the Court at Mumbai to Court at Nagpur. The learned Counsel further argued that wife is young lady dependent on her parents and it is very prejudicial to her to travel to Mumbai again and again to seek interest of justice from the Court at Mumbai. The learned Counsel further argued that the applicant / the first informant is ready to bear expenses of witnesses who are from Mumbai. To buttress his submission that the case needs to be transferred to Mumbai, reliance is placed on the following judgments;

- (i) *Harita Sunil Parab Vs. State of Nct of Delhi* on 28th March, 2018 in Transfer Petition (CRL.) Nos.253, 254-255 of 2017.
- (ii) *A.C. Chummar Vs. R. Vasantha Kumar* 2005(1) CTC 739
- (iii) *Nilesh Jap Daru Vs. State of Maharashtra* 2005(1) Mh.L.J.
- (iv) *Koppera Santha Kumar Vs. Koppera Suneetha w/o K Santha Kumar* 2005 Law Suit (AP) 1070
- (v) *Ganpat D. Kulthe Vs. Dr. Mahesh S. Chandurkar & anr.* In Criminal Application No.444 of 2014

By relying on these judgments, the learned Counsel for the applicant argued that when there is a reasonable apprehension on the part of the party that justice will not be done, the matter needs to be transferred from the Court at Mumbai to the Court at Nagpur. It is further argued that it is the basic principle of law that *justice must not only be done, but must be seen to be done*. The apprehension needs to be reasonable. The learned Advocate appearing for the respondents opposed the application.

3. Crime No.162 of 2017 came to be registered at the instance of applicant / the first informant against her husband and parents-in-law with Khar Police Station for offences punishable under Sections 498A, 406, 504, 506 read with 34 of the Indian Penal Code on 20th April 2017. The investigation in the said crime has resulted in filing of the chargesheet and that is how the criminal case bear no.PW/1214/2017 came to be registered and is pending on the file of the learned Additional Chief Metropolitan Magistrate at Bandra. The chargesheet reveals that accused are husband and parents-in-law. It is seen from the chargesheet that accused no.2 is mother-in-law Kamini Ashok Kalra has stated to be 55 years of the age and Accused no.3 Ashok Kalra is stated to be 62 years of the age. What is sought to be prayed in instant

applicant is transfer of Regular Criminal Case from Mumbai to Nagpur.

4. Section 407 of the Criminal Procedure Code provides that whenever it appears to this Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court Subordinate thereto, and when general convenience of the parties or witnesses requires that the case needs to be transferred then the Court may pass an appropriate order for transferring of the case from one Court to another Court. In the case in hand, so far as the fair and impartial trial is concerned, there is no tangible material to show that the Metropolitan Magistrate before whom the trial is pending, has bias against the applicant. There are no such pleadings to that effect. The question then remains is that of general convenience of parties. Failure to attend the Court on any of the date of hearing by the accused results in issuance of non bailable warrant against such an accused. The accused is required to attend the trial Court on each and every date of hearing. In event of transfer of case from Mumbai to Nagpur, it will be necessary for the three accused person to attend Court at Nagpur on each date and failure to do so will results in issuance of warrant against the accused. Two of the accused persons i.e. parents in law are aged persons. All of them are resident of Mumbai. Therefore, it cannot be said that general convenience of the

parties requires transfer of case from Mumbai to Nagpur.

5. As against this, if the subject criminal case is kept at Mumbai itself, then the applicant/the First Informant will have to attend the Court at Mumbai once only for the purpose of adducing her evidence. List of the witnesses in the chargesheet reveals that there are in all 9 witnesses. Apart from the applicant/the First Informant, two more material witnesses are from Nagpur i.e. Meena Parasram Saraf and Parasram Tikamdas Saraf. They also will have to attend the Court at Mumbai once only for recording their evidence. In this view of the matter, judgments relied upon by the learned Counsel for the applicant are of no assistance to espouse the cause of the applicant.

6. No case for transfer therefore is made out. The application is therefore rejected. However, the trial Court is directed to complete recording of evidence of the witness summoned on the very same day and the respondents/accused should not seek adjournment for cross-examination of those witnesses.

Vina
Arvind
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(A.M.BADAR J.)