

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 68/2017

Rajesh Wasudeorao Dabhade

..VS..

Sau. Mrunalini Rajesh Dabhade & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.
DATED : 28/11/2018

By this application under Section 407 of the Code of Criminal Procedure, the applicant prays that the proceedings filed by the non-applicant no. 1 under the provisions of the Protection of Women From Domestic Violence Act, 2005 be transferred from the Court of J.M.F.C., Court No. 8, Amravati to any other Court.

An application under Section 408 of the Code of Criminal Procedure was filed before the learned Principal District and Sessions Judge which is dismissed, and the order passed by the learned Sessions Judge is also challenged in this application.

According to the applicant, the learned Magistrate (before whom the proceedings are going on) has not accepted the request made on behalf of his advocate for keeping the matter on a particular date.

While dismissing the application, the learned Sessions Judge has dealt with the relevant aspects in para nos. 12, 13 and 14 as follows:-

“12. The noting made by learned Magistrate would clearly show that advocate for petitioner has not really maintained decorum before the Court. As such, the learned advocate has not accepted the contents of noting but the manner in which the application is drafted, particularly underlined portion noted above, would support the noting of learned Magistrate. In any case, there is no reason to disbelieve exhaustive note made below Exh. 1. The incident dt. 04-08-2017, as it spelt out in the present application so also in the note made by learned Magistrate would clearly show that the advocate for petitioner insisted to keep the matter on 09-08-2017 on the ground that he is not available before the Court on 07-08-2017. Firstly, he could have, at the most, made a request to postpone the date, which he did not. Secondly, the date could not have been postponed when respondent No. 1 and her advocates were informed about posted date which was 07-08-2017. The so called oral understanding between presiding officer and learned advocate for petitioner are contrary to the record, particularly Roznama.

13. It will be appropriate to note here that impugned order of maintenance of Rs. 8,000/- was passed by learned Magistrate in the month of April-2017. When asked learned advocate for petitioner would submit that as per order Rs. 8000/- was to be paid from the date of filing of application. As stated earlier, the application was filed on or about 2/6/2016. When asked learned advocate for petitioner would submit that he has paid Rs. 19,000/- approximately in the month of June-2017. Thus, the petitioner has not obeyed the interim order. The note made by learned Magistrate would also show that Rs. 90,000/- was in arrears. Therefore, the Court gave clear understanding to petitioner that appropriate order will be passed on the application for attachment of salary.

14. It appears that learned Magistrate has passed such order on 08-08-2017. The petitioner has on his own thought that the matter will be posted on 09-08-2017. Such assumption would not be valid ground to seek transfer of application. The petitioner and his counsel have made unwarranted allegations against the learned Magistrate. If the matters are transferred on the ground that the date is not postponed or that order is passed immediately on next day of hearing, to which petitioner termed it to be order “behind his back”, then it would be difficult for the judges to deliver justice without fear and favour. It is not the case of the petitioner that order below Exh. 54 is passed without

hearing petitioner. The conduct of the petitioner is such that instead of complying with the order of interim maintenance, he has opposed the application for attachment of salary on the ground that he will deposit the same amount on 09-08-2017. He has not shown willingness to pay entire amount on next date. Thus, petitioner has not shown any respect to the interim order passed by learned Magistrate. The submissions are made before trial Court so also before this Court that though petitioner has shown willingness to deposit some amount of maintenance on 09-08-2017, the learned Magistrate has attached salary on 08-08-2017. The submissions are so made as if the petitioner is showing favour to respondent No. 1 so also to the Court that he is ready to pay some amount of maintenance on next date. The submissions are so made that such statement should be taken by the court to be fair approach of the petitioner and should adjourn the matter as per his convenience and insistence.”

I find that the approach of the learned Sessions Judge is proper and correct. Concurring with the conclusions of the learned Sessions Judge, I **dismiss** this application. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari