

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9803 of 2019

Ashwini w/o Dipak Patil,
Age : 24 years, Occ. Household,
R/o. Vilas Namdeo Ajbe,
Near Savli Hotel, Malegaon Road,
Chalisingaon, Tal. Chalisingaon,
Dist. Jalgaon.

... PETITIONER

VERSUS

Dipak s/o Ashok Patil,
Age : 33 years, Occ. Service,
R/o Utran, Tal. Erandol,
Dist. Jalgaon.

... RESPONDENT

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Advocate for the Petitioner : Shri U. S. Patil
Advocate for the Respondent : Shri Chandrakant P. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th AUGUST, 2019.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The petitioner wife seeks to challenge the order dated
17/04/2019 passed by the learned Principal District Judge, by

which, Civil M.A. No. 120/2019 praying for transferring HMP No. 638/2018 from the Jalgaon Court to the Chalisgaon Court, has been rejected.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the petition paper book. There is no dispute that two cases, one under the Protection of Women from Domestic Violence Act, 2005 and another under Section 125 of the Code of Criminal Procedure, have been instituted by the wife before the competent Court at Chalisgaon. The respondent husband is attending the proceedings under Section 125 of Cr.P.C. and has also filed his written say. He is yet to receive the notice under the Domestic Violence Act.

4. The judgments would be of assistance :-

- (i) Vennangot Anuradha Samir Vs. Vennangot Mohandas Samir – 2016(1)Bom.C.R. 250,
- (ii) Soma Choudhuri Vs. Gourab Choudhuri (2004)13 SCC 462,
- (iii) Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani - AIR 2009 SC 1374,

- (iv) Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap -
2016 AIR (SC) 3584,
- (v) Sumita Singh vs. Kumar Sanjay -
(2001) 10 SCC 41 : AIR 2002 SC 396,
- (vi) Mahadevi Mehtre vs. Gopal - 2015 (5) AIR Bom. 250,
- (vii) Mona Aresh Goel vs. Aresh Satya Goel -
2000 (9) SCC 255 : AIR 2000 SCW 2652,
- (viii) Ravinder Kaur vs. Hitinder Singh - AIR 2000 SC 3403,
- (ix) Rena Gautam vs. Vinod Gautam - AIR 2000 SC 3405,
- (x) Reena Mehra vs. Rohit Rai Mehra - AIR 2003 SC 1002,
- (xi) Rakhi Banerjee vs. Subhankar Mukherje -
AIR 2009 SC 928,
- (xii) T.Gayatri Devi vs. Tallepaneni Sreekanth -
2013 (6) Bom. C.R. 119 (SC),
- (xiii) Anita Balkrishna Barge vs. Balkrishna Sopan Barge -
2011 (3) Bom. C.R. 866 (Aurangabad Bench) and
- (xiv) Smita Dhananjay Patil vs. Dhananjay Krishnakumar Patil -
2013 (5) Bom.C.R. 694 (Aurangabad Bench).

5. In such matters, what is required to be seen is the

comparative hardships as well as the convenience of the parties. The husband travels to Chalisgaon to attend the proceedings. After receiving the notice under the Domestic Violence Act, he would have to travel to Chalisgaon even for that matter. As such, in two cases, the husband travels to Chalisgaon and in one case, the wife has to travel to Jalgaon.

6. In HMP No. 638/2018, which is sought to be transferred, the Trial Court has granted Rs. 1,500/- as maintenance *pendente lite* to the wife and has also granted Rs. 5,000/- towards legal expenses. The learned Advocate for the petitioner submits on instructions that the petitioner is willing to return the amount of Rs. 5,000/- if the proceedings are transferred to Chalisgaon. So also, the husband would be at liberty to seek common dates in the three proceedings so as to participate in such proceedings in his common visits.

7. The learned Advocate for the respondent husband relies upon the judgment delivered by the Honourable Apex Court in the matter of *Anindita Das Vs. Srijit Das, (2006) 9 SCC 197*, wherein the Honourable Apex Court has held that the wife can

apply for exemption from attending the Court at Delhi and her contention that she is not keeping good health can be no ground for transfer.

8. I find that the view taken in the *Anindita's case (supra)* is distinguishable on facts as the husband has to travel to Chalisgaon to attend the proceedings lodged by the wife at Chalisgaon.

9. I do not find any propriety to make the petitioner wife travel to Jalgaon for attending one matter filed by the husband when the husband has to visit Chalisgaon considering the two proceedings filed by the wife. The proceeding filed by the husband at Jalgaon can be transferred to the Court of the learned Civil Judge, Senior Division, Chalisgaon which is available.

10. In view of the above, this petition is partly allowed. HMP No. 638/2018 shall stand transferred from the Court of the learned Civil Judge, Senior Division, Jalgaon to the Court of the learned Civil Judge, Senior Division, Chalisgaon. The impugned order dated 17/04/2019 stands quashed and set aside and Civil M.A. No.120/2019 shall stand allowed.

11. The learned Advocate for the petitioner wife submits that the next date before the Trial Court is 05/10/2019. As such, both these parties shall appear before the concerned Court at Chalisgaon in view of HMP No. 638/2018 having been transferred.

12. The petitioner shall deposit the amount of Rs. 5,000/-, if already received from the husband, before the concerned Court at Chalisgaon. The respondent husband is at liberty to withdraw the same and pray for common dates in all the three matters so as to participate in the said proceedings in his common visits to Chalisgaon.

13. Considering the request of the parties, the Courts dealing with the said cases, may consider deciding the said cases expeditiously.

14. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-