

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3786 OF 2018

Shrikrushna s/o. Damodhar Shingne,
Age 30 years, Occu. Service,
R/o. Shendurjan, Tq. Sindkheda Raja,
Dist. Buldhana at present
Collector Office, Akola, Dist. Akola.

Versus

Sou. Sangita w/o. Shrikrushna Shingne,
Age 23 years, Occu. Household,
R/o. C/o. Ramkrushna Dattatraya Hade,
Shivaji Colony, Shri. Vitthal Temple, Lonar,
Tq. Lonar, Dist. Buldhana.

AND

C/o. Tukaram Parasram Jadhav,
Pedgaonwadi, Tq. and Dist. Hingoli.

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Shri. Vitthal M. Chate, learned counsel for applicant.
Shri. D. M. Shinde, learned counsel for respondent.

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WITH
CRIMINAL APPLICATION NO. 3787 OF 2018

1. Shrikrushna s/o. Damodhar Shingne,
Age 30 years, Occu. Service,
R/o. Shendurjan, Tq. Sindkheda Raja,
Dist. Buldhana at present
Collector Office, Akola, Dist. Akola.
2. Damodhar s/o. Devrao Shingne,
Age 60 years, Occu. Pensioner,
3. Narmadabai w/o. Damodhar Shingne,
Age 55 years, Occu. Household,
4. Sachin s/o. Damodhar Shingne,
Age 25 years, Occu. Service,

5. Sau. Shubhangi w/o. Sachin Shingne,
Age 23 years, Occu. Household,

All Nos. 2 to 5 R/o. Shendurjan,
Tq. Sindkhed Raja, Dist. Buldhana.
6. Sau. Vandana w/o. Sunil Jadhav,
Age 35 years, Occu. Household,
R/o. Madni, Tq. Mehkar,
Dist. Buldhana.
7. Sau. Nanda w/o. Sandip Kale,
Age 30 years, Occu. Household,
R/o. Balaji Nagar, Near Tuljai Kirana,
Tq. Mehkar, Dist. Buldhana.

Versus

Sou. Sangita w/o. Shrikrushna Shingne,
Age 23 years, Occu. Household,
R/o. C/o. Ramkrushna Dattatraya Hade,
Shivaji Colony, Shri. Vitthal Temple, Lonar,
Tq. Lonar, Dist. Buldhana.

AND

C/o. Tukaram Parasram Jadhav,
Pedgaonwadi, Tq. and Dist. Hingoli.

...

Shri. Vitthal M. Chate, learned counsel for applicants.
Shri. D. M. Shinde, learned counsel for sole-respondent.

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CORAM : K.K. SONAWANE,J.

DATE : 04th APRIL, 2019.

JUDGMENT:

The applicant-husband, invoking remedy under Section 407 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), preferred these applications seeking relief to get

transferred the proceedings bearing Cr.M.A.No. 101 of 2018 filed under Section 125 of Cr.P.C. and the proceedings bearing P.W.D.V. No. 15 of 2018 filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005, on behalf of respondent-wife, pending before the learned Judicial Magistrate, First Class, Hingoli to any other competent Court of learned Magistrate at Lonar or Sindhkhed-Raja or any competent Court in Buldhana District.

2. The points in controversy in both these applications are identical and rest on one and the same legal issue of “residence” of the respondent-wife, for territorial jurisdiction of the learned Magistrate to entertain the proceedings, and therefore, both these allied applications are taken up for its adjudication on merit, simultaneously, by this Common Judgment.

3. It has been contended that, the applicant and respondent are husband and wife. Their marriage was solemnized on 08-05-2015 at Lonar, District Buldhana. After marriage, the respondent-wife joined the family of applicant-husband for cohabitation at her matrimonial home located at Shendarjan, Taluka Sindhkhed Raja, District Buldhana. According to respondent-wife, initially she received good treatment from her husband and inmates of the matrimonial home for about two to three months of her marriage. But, thereafter, she was subjected to maltreatment on

account of flimsy reasons. The respondent-wife also came to know that her husband has an illicit relationship with one woman and on that count also she was being mentally and physically maltreated and harassed by her husband. There was also unlawful demand of money on the part of her husband and inmates of the matrimonial home. They insisted the respondent-wife to bring money from her parents. The respondent-wife was subjected to cruelty. She was being abused and beaten up by her husband and other members of the matrimonial home. The continuous mental and physical torture resulted into not keeping good health by the respondent-wife. Meanwhile, she was admitted in the hospital for mental trauma. Eventually, since 28-09-2016, the respondent-wife started residing with her parents. The applicant-husband did not make any provision for her maintenance. The circumstances constrained her to approach to the learned Magistrate, Hingoli and filed criminal proceeding under Section 125 of Cr.P.C. for grant of subsistence allowance. The respondent-wife also simultaneously preferred complaint under Section 12 of the Protection of Women From Domestic Violence Act, 2005, before the learned Magistrate at Hingoli, for relief against the husband and other inmates of her matrimonial home.

4. In response to the notices, the applicant-husband appeared in both the proceedings before the learned Magistrate

and raised objections about territorial jurisdiction of the learned Magistrate to entertain both the proceedings filed under Section 125 of Cr.P.C. as well as under Section 12 of the Protection of Women From Domestic Violence Act, 2005. The applicant-husband preferred application (Exhibit-8) in the proceeding under Section 125 of Cr.P.C. and the application (Exhibit-16) in the proceedings filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005, filed by respondent-wife. The learned Magistrate dealt with both the applications filed on behalf of applicant-husband in regard to his objections about territorial jurisdiction of the learned Magistrate to entertain the proceedings. After hearing both parties, the learned Magistrate found reluctant to favour the applicant-husband to get the proceedings dismissed for want of jurisdiction or in the alternative to issue directions to respondent-wife to present both the proceedings before the competent Court for trial in accordance with law. In the result, both the applications (below Exhibits No. 8 and 16) filed on behalf of applicant-husband for a preliminary objections came to be rejected by the learned Magistrate.

5. The learned counsel for the applicant-husband vehemently submits that the matrimonial home of the respondent/wife is at Shenduljan, Taluka Sindhkhed Raja, District Buldhana, whereas, the permanent residence of her parents is at

Lonar, Taluka Lonar, District Buldhana. Moreover, marriage of spouses was solemnized at Lonar i.e. at the house of parents of the respondent-wife. The document of electricity bill produced on record also indicates that the father of respondent-wife has an residence at Lonar. According to the learned counsel, due to matrimonial discord, respondent-wife started residing with her parents at Lonar, and therefore, the learned Magistrate at Hingoli has no jurisdiction to entertain both the proceedings, filed on behalf of respondent-wife for relief of maintenance, etc. The learned counsel for the applicant-husband gave much more emphasis on the provision of Section 126(1) of Cr.P.C. and submits that the law provides three options to the respondent-wife to institute the proceedings under Section 125 of Cr.P.C. As per the provision of Section 126(1) of Cr.P.C. the wife is entitled to file proceeding, where she resides. According to learned counsel, the respondent-wife did not reside within the territorial of Hingoli District. The residence of her parents was also not within the territorial jurisdiction of Hingoli District. The applicant-husband obtained extract of application filed by the respondent-wife in the office of Tahsildar, Akola, seeking information about the salary of the applicant-husband. The extract of application filed on behalf of respondent-wife obtained under the Right to Information Act, demonstrates that the respondent-wife has shown her address at Lonar i.e. the residence of her parents. Therefore, the learned

counsel submits that, both the proceedings filed on behalf of respondent-wife are not at all amenable with the jurisdiction of learned Magistrate at Hingoli.

6. In support of his claim, the learned counsel for the applicant-husband relied upon the judicial precedents in the matter of - ***K. Mohan Versus Balakanta Lakshmi***, reported in ***1983 Cri.L.J. 1316***, ***Surinder Kumar Versus Darshan Kumari***, reported in ***1993 DGLS (Cri) Soft-514***, and, ***Vijay Sudhakar Patil Versus Asha Vijay Patil***, reported in ***2014 DGLS (Cri.) Soft 1118***.

7. In refutation, the learned counsel for respondent-wife vociferously opposed the contentions put-forth on behalf of applicant-husband and submits that, after desertion, the respondent-wife started residing with her parents at Lonar. But, following continuous mental and physical torture, the respondent-wife was suffering from mental illness. The regular medical treatment was necessary for the respondent-wife. There were no proper medical facilities available for the respondent-wife at the residence of her parents at Lonar. Therefore, she shifted her residence to the house of her maternal aunt at Pedgaonwadi, Taluka and District - Hingoli. According to learned counsel for respondent-wife, there was no provision for maintenance of estranged wife.

Therefore, the respondent-wife preferred to file proceedings for maintenance, etc. before the learned Magistrate at Hingoli. The stay of respondent/wife within the territorial jurisdiction of Hingoli was for the purpose of her medical treatment/facilities. Learned counsel further added that the learned Magistrate considered all these facts in proper manner and rejected the preliminary objections raised on behalf of applicant-husband. There is no propriety to get transferred both the proceedings to any other competent Court within Buldhana District, otherwise, it would cause hardship and prejudice to the respondent-wife for substantial justice into the matter.

8. Having given anxious consideration to the rival submissions, I find no merit in the contentions propounded on behalf of applicant-husband. The respondent-wife categorically came forward with a specific pleading that after the marriage, the applicant-husband and other inmates of the matrimonial home subjected her to mental and physical cruelty. She was driven out of the house and left in lurch at the mercy of parents. The respondent-wife, since 28-09-2016, started residing with her parents at Lonar, but, she was in need of regular medical treatment due to mental and physical maltreatment at her matrimonial home. The proper medical treatment was not available at the residence of her parents, therefore, she shifted her residence and started residing at

Pedgaonwadi, Taluka and District Hingoli at the house of her maternal-aunt for medical treatment. Thereafter, she has chosen the territorial jurisdiction of learned Magistrate at Hingoli for substantial relief of subsistence allowance, etc.

9. At this juncture, it would be relevant to take into consideration the provision of Section 126(1) of Cr.P.C., which reads as under :-

“Section 126 (1) of the Code of Criminal Procedure provides :

“Proceedings under Section 125 may be taken against any person in any district :

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.”

(2) xx xx xx xx

(3) xx xx xx xx

10. It is evident from the aforesaid legal provision that the respondent-wife is entitled to initiate proceeding under Section 125 of Cr.P.C. against the husband where she resides and the jurisdiction of the learned Magistrate is to be determined by the residence of the parties. In similar fashion, Section 27(1)(a) of the Protection of Women from Domestic Violence Act, 2006, contemplates jurisdiction of the learned Magistrate to entertain the

complaint filed under the Protection of Women From Domestic Violence Act, 2005. The provision of Section 27(1)(a) of D. V. Act, is reproduced as under :-

"27. Jurisdiction.—

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India."

11. It is worth to mention that in both the aforesaid provision i.e. under Section 126(1) of Cr.P.C. and Section 27(1)(a) of the D.V. Act, 2005, the residence of the concerned party, seeking relief would be a decisive factor for determination of jurisdiction of learned Magistrate to entertain the complaint. The word "reside" referred in the aforesaid legal provisions does not only mean domicile in the technical sense, but, there shall be intention to stay for a period, length of which depend upon the circumstances of each case. It must be something more than a flying visit or a casual stay. A person resides in a place, if he makes it his abode permanently or even temporarily. It depends upon facts of each case. In short, the expression "resides" include both "voluntary"

and “permanent residence”, but, does not include “casual” or “a flying visit” or “a brief stay”.

12. In the matter in hand, as referred above, the respondent-wife stated that her place of residence was at Pedgaonwadi, Taluka and District Hingoli. She used to reside at Pedgaonwadi with her maternal-aunt and uncle, for taking medical treatment. She was not residing at Pedgaonwadi temporarily or her stay was not casual but it was for a considerable period. The purpose of her residence was for requisite medical treatment in order to maintain proper health. It is true that Section 126(1) of Cr.P.C. gives three alternative forums as described in clauses (a) to (c) to facilitate the destitute and deserted wife to get essential relief expeditiously by availing any one of the above referred three forums, which is convenient to her.

13. Undisputedly, the proceeding under Section 125 of Cr.P.C. as well as proceeding under the D.V.Act are summary proceedings for expeditious relief to destitute wives, hapless women and children. It is the rule of law that the word “resides” should be construed liberally, but, at the same time, without defeating the very object of these provisions. The learned Single Judge of the Madras High Court in the matter of - ***K. Mohan Versus Balkanta Lakshmi*** (cited *supra*), held in para 11 as under-

“11. In this case, the context and the purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word 'resides' is understood to include temporary residence. For example, if a person goes from his permanent place 'A' to another place 'B' either for carrying out certain work or as an invitee or as a tourist and resides or stays there for one or two days, he cannot be said to be residing at 'B' in the legal sense. But, if he goes to the place 'B' and stay there for some length of time, though not permanently, but for the purpose of either educating his children or carrying on a business for a considerable length of time, he resides at 'B'. One cannot give exhaustive illustrations to explain what the term 'resides' means. But, its meaning has to depend upon the circumstances of each case. The main criteria in determining what the term 'reside' means, is the intention or the animus manendi of the person residing in a particular place, and the cognate expression includes both temporary and permanent residence. But, the expression 'resides' used in Section 126(1)(b) of the new Code will not include a casual or flying visit or a brief stay. On the other hand, it implies more than that.”

14. The learned Single Judge of this Court (Coram : Cheema A.I.S. J.) in the case of - **Vijay Sudhakar Patil Versus Asha Vijay**

Patil (cited *supra*) held that the words “temporarily resides” used in Protection of Women from Domestic Violence Act, 2005, can not be equated with casual visits or casual stay at a place with no intention to reside there. The similar view has been expressed by the learned Single Judge of Punjab and Hariyana High Court in the matter of **Surinder Kumar Vs. Darshan Kumari** (cited *supra*).

15. Admittedly, all the aforesaid judicial precedents are referred on behalf of applicant-husband, but, these citation does not advance to the case of the applicant/husband any further, on the contrary it supports to the case of respondent-wife on the issue of interpretation of word “reside” used in the provision of Section 126(1) of Cr.P.C. as well as Section 27(1)(a) of D.V. Act. It would be reiterated that the circumstances on record adumbrates that the residence of the respondent-wife within the jurisdiction of learned Magistrate at Hingoli was not a casual or flying visit, but, she used to stay there for her medical treatment and in view of length of stay at the house of her maternal aunt, there is no impediment to arrive at the conclusion that the present proceeding initiated by the respondent-wife against the applicant-husband are amenable within the territorial jurisdiction of learned Magistrate at Hingoli. The learned Magistrate also considered the factual aspects about the residence of respondent-wife in proper manner while considering the preliminary objection to the jurisdiction of the learned

Magistrate to entertain the respective applications (below Exhibits No. 8 and 16) filed on behalf of applicant-husband. Both the applications were turned down by the learned Magistrate with the observation that in view of residence of respondent-wife, the Court of learned Magistrate at Hingoli has an territorial jurisdiction to entertain the proceedings. In such circumstances, there is no propriety to exercise the inherent powers under Section 482 of Cr.P.C. in favour of applicant-husband. It is also preposterous and incomprehensible to exercise the jurisdiction under Section 407 of Cr.P.C. for transfer of present proceedings to the competent Court in Buldhana District. Hence, both the applications, being devoid of merits, deserve to be dismissed. Accordingly, the applications stand dismissed.

[K. K. SONAWANE]
JUDGE.

Grt/-