

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.196 OF 2017

WITH

CRIMINAL APPLICATION NO.197 OF 2017

Pratibha Pravin Pise & Ors.

...Applicants

V/s.

The State of Maharashtra & Anr.

...Respondents

Mr. Anand S. Patil, Advocate for the Applicants.

Mr. S.R. Ganbavale, Advocate for Respondent No.2.

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 29th JANUARY 2019

P.C. :

1. Criminal Application bearing No.196/2017 is filed by applicant No.1 wife as well as other applicants, who happens to be her father and brothers. By this application, the applicants are seeking transfer of Regular Criminal Case bearing No.5833/2016 pending on the file of the learned Judicial Magistrate First Class, Pune against respondent No.2 Pravin Pise-husband of applicant

No.1 Pratibha Pise. This Regular Criminal Case is for alleged offences punishable under Sections 498-A, 504 and 506 read with Section 34 of the Indian Penal Code. Apart from respondent No.2 husband Pravin Pise, other co-accused in this case are Nitin Pise, Vilas Pise, Vidya Pise, Smita Bhasme and Vivek Bhasme, who happens to be in-laws of applicant No.1 Pratibha Pise.

2. Criminal Application bearing No.197/2017 is filed by applicant No.1 Pratibha Pise as well as other applicants, who happens to be her father and two brothers. By this criminal application, the applicants are seeking transfer of Regular Criminal Case bearing No.3603/2015 pending on the file of the learned Judicial Magistrate First Class at Shivaji Nagar, Pune for offences punishable under Sections 143, 149, 323 and 325 of the Indian Penal Code. This criminal case is registered on the basis of the charge-sheet filed in pursuant to investigation of Crime No.151/2015 registered at the instance of respondent No.2 Pravin Pise. The applicants are some of accused in this criminal case bearing No.3603/2015 pending on the file of the learned Judicial First Class, Pune.

3. By both these applications, applicants who happens to be wife and in-laws of respondent No.2 Pravin Pise are seeking transfer of both criminal cases from the file of the learned Judicial Magistrate First Class, Pune to the file of the learned Judicial Magistrate First Class at Kolhapur.

4. Heard the learned Counsel appearing for the applicants. He submitted that other two cases including one under Section 12 of the Protection of Women from Domestic Violence Act, 2005 filed by applicant Pratibha Pise is pending on the file of the learned Judicial Magistrate First Class at Kolhapur. Similarly, divorce proceedings initiated by respondent No.2 Pravin Pise are pending on the file of the Family Court at Kolhapur. Evidence which would be adduced in all these cases would be similar, therefore, all cases needs to be dealt with by one Court at Kolhapur. According to the learned Counsel for the applicants, this is necessary for avoiding multiplicity of proceedings.

5. The learned Counsel appearing for respondent No.2 Pravin Pise opposed both these applications by contending that all

necessary parties are not joined to the proceedings. He also argued that the incidents are different, and therefore, all criminal cases cannot be clubbed together on the file of a single Court.

6. I have heard the learned APP for the Respondent/State.

7. I have considered the submissions so advanced. So far as Criminal Application No.196/2017 is concerned, transfer of prosecution initiated by the State at the instance of applicant No.1 Pratibha Pise for offence punishable under Section 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code against respondent No.2 Pravin Pise and his relatives is sought from the file of the learned Judicial Magistrate First Class, Pune to the file of the learned Judicial Magistrate First Class at Kolhapur. General convenience of parties is one of the ground for seeking transfer. There cannot be any multiplicity of the proceedings in such situation. This is so because Regular Criminal Case No.5833/2016 is in respect of specific offences allegedly committed by respondent No.2 Pravin Pise and others from marriage till lodgment of the FIR. Those are offences of cruelty of a married women, causing hurt, criminal intimidation

etc. during this period. Apart from respondent No.2 Pravin Pise, his five relatives are arraigned as accused in Criminal Case No.5833/2016. Applicant No.1 Pratibha Pise is the first informant and as such, the witness in the said case. In absence of the charge-sheet, it is not possible to infer whether other applicants are witnesses in that case. Even if it is assumed that all applicants are witnesses in the said criminal case bearing No.5833/2016 pending on the file of the learned Judicial Magistrate First Class at Pune, they all will be required to attend the Court of the learned Judicial Magistrate First Class, Pune only on one date of recording of their evidence and that too upon being summoned by the learned trial Court. So far as accused persons in that criminal case is concerned, those are husband, aged parents-in-law, brothers-in-law, so also sisters-in-law of the husband. If the case is transferred from the learned Judicial Magistrate First Class, Pune to the file of the learned Judicial Magistrate First Class at Kolhapur, then all these six accused will have to attend each and every date of hearing of the said criminal case before the learned Judicial Magistrate First Class at Kolhapur. Absence on any date of

hearing on their part may invite issuance of bailable or non-bailable warrant against them. Comparative hardship in such situation, would be more to the accused persons in regular Criminal Case No.5833/2016 in the event of its transfer from Pune to Kolhapur. In this view of the matter, no case for transfer of Regular Criminal Case No.5833/2016 of the Court of the learned Judicial Magistrate First Class, Kolhapur is made out.

8. So far as Regular Criminal Case bearing No.3603/2015 is concerned, the same is registered on the basis of the FIR lodged by respondent No.2 Pravin Pise against his wife and in-laws. It is alleged against accused persons in the said criminal case that they all entered in the house of respondent No.2 Pravin Pise and indulged in rioting as well as causing hurt with dangerous weapons to respondent No.2 Pravin Pise and his relatives. Investigation of that crime has resulted in prosecution of accused persons and as the offence took place within the territorial jurisdiction of the learned Judicial Magistrate First Class at Pune, the charge-sheet is filed in the said Court resulting in registration of the subject criminal case. No reason is shown for transfer of

this regular criminal case bearing No.3603/2015 from the file of the learned Judicial Magistrate First Class, Pune to the file of the learned Judicial Magistrate First Class at Kolhapur except the fact that the applicants would require to travel from Uchgaon to Pune. The applicants being accused in that case are supposed to travel to the Court of a territorial jurisdiction. This cannot be a ground of transfer of the criminal proceedings. Other proceedings between the parties are totally for different reliefs.

9. So far as regular Criminal Case No.3603/2015 pending on the file of the learned Judicial Magistrate First Class, Pune is concerned, considering the fact that the accused therein including the applicants are not residing at Pune, interest of justice would be served if the learned trial Court is directed to consider applications for exemption from personal attendance filed by the accused therein on formal dates. In the result, the following order:

ORDER

- (i) Both the applications are rejected.
- (ii) However, the learned trial Court to consider

applications for exemption from personal attendance liberally, if any, moved by the accused in Regular Criminal Case No.3603/2015 on formal dates provided those are not meant for protraction of the trial.

(iii) The Prosecuting Agency is expecting not to oppose such applications on formal dates of hearing of that regular criminal case.

(iv) The applications are disposed of accordingly.

(A.M.BADAR J.)