IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATTION NO.713 OF 2018

Sau.Vaishnavi w/o. Nilesh Mirajkar & Anr. ... **Applicants**
V/s.
The State of Maharashtra & Ors. ... **Respondents**

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Mr.Abhijit Patil, Advocate for the Applicants.

Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 24st JANUARY 2019.

P.C. :

1 This is an application under Section 407 of the Code of Criminal Procedure for transfer of Regular Criminal Case No.751 of 2017 pending before the learned Judicial Magistrate First Class, Kolhapur, wherein respondent Nos.2 to 5, who are husband, parents-in-law and sister-in-law of the applicant No.1, are accused.

2 Heard the learned Counsel appearing for the applicant/First Informant. He argued that as the applicant No.1 was subjected to cruelty by her husband and in-law, she lodged the FIR against them on 07/03/2017 with Police Station, Karveer, District Kolhapur. Subsequently, she went to reside at the place of

her father at Aurangabad. The learned Counsel further argued that the applicant No.1 is having one year old son and, as such, it is not possible for her to attend the Court at Kolhapur. The learned Counsel for the applicant further argued that two more proceedings, one claiming maintenance under Section 125 of Code of Criminal Procedure and another one filed under the Protection of Women from Domestic Violence Act are pending in the Court at Aurangabad and, therefore, Regular Criminal Case No.715 of 2017 also needs to be transferred to the Court of the learned Judicial Magistrate First Class at Aurangabad.

3 I have considered the submissions so advanced and also perused the record made available.

4 Investigation of Crime No.93 of 2017 registered with Police Station, Karveer in pursuant to the FIR lodged by the applicant No.1 has resulted in filing of the charge-sheet against respondent Nos.2 to 5, who happens to be husband, parents-in-law and sister-in-law of the applicant No.1. As per the charge-sheet, parents-in-law are aged about 60 years and 52 years, whereas sister-in-law seems to be of 38 years of age. She is a married lady. True it is that the distance between Aurangabad and Kolhapur is more than 400 kms., but one needs to keep in mind that the criminal case is filed by the State against the respondent Nos.2 to 5 for offences punishable under Sections 498-A and 504 read with Section 34 of the Indian Penal Code. It is reportedly

pending in the Court having territorial jurisdiction i.e. in the Court of the learned Judicial Magistrate First Class at Kolhapur. It being the criminal case, all accused persons viz. Respondent Nos.2 to 5 are required to attend the Court on each and every date of hearing. If they fails to attend the Court on the date fixed for hearing, there is every possibility of issuance of bailable or non-bailable warrant against them, they being accused in Regular Criminal Case No.751 of 2017. As against this, applicant No.1 Vaishnavi Mirajkar being the First Informant i.e. witness in the Regular Criminal Case, filed by the State is supposed to attend the Court of learned Judicial Magistrate First Class at Kolhapur as and when summoned and that too only for the purpose of adducing evidence before the Court.

5 Comparative hardship suffered by the parties and general convenience of the parties are the considerations for transfer of case. If the Regular Criminal Case, as sought by the applicant in which the respondents are accused, is transferred to the Court at Aurangabad, the the respondent Nos.2 to 5 will suffer more hardship than the applicant. They will have to travel all the distance from the place of their residence to Aurangabad on each and every date of hearing under the threat of issuance of warrant in absence of attending the Court. The respondent Nos.3 and 4 are aged parents-in-law, whereas the respondent No.5 is a married sister-in-law.

6 In this view of the matter, no case for transfer of Regular Criminal Case bearing No.751 of 2017 from Kolhapur to Aurangabad is made out. Needless to mention that the other proceedings which are pending before the learned Court at Aurangabad are not in respect of any criminal offence against the respondents. Those appears to be for claiming maintenance wherein personal attendance of the respondents is not required.

7 In this view of the matter, the application is rejected.

(A.M.BADAR J.)