

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 724 OF 2018

Nilesh Sambhaji Mali & ors.

.Applicants

Vs.

Smita Nilesh Mali alias

.Respondents

Smita Appasaheb Chougule & anr.

Mr. P. Dabade i/b. Mr. V. B. Shivarkar, Advocate, for the Applicants

Mr. P. D. Pise, Advocate, for the Respondent No. 1

Mrs. P. P. Shinde, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 13.03.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicants seek transfer of three cases from their respective Courts in Sangli and Satara to the Courts in Navi Mumbai. The 3 cases are ; 498A case filed by the Respondent No. 2 in Vaduj Police Station, Satara; divorce proceedings filed before the learned CJSD, Sangli and the domestic violence proceedings filed before the learned JMFC, Miraj, Sangli.

3. It is pertinent to note that the Applicants are accused in a 498A case and some of the Applicants are Respondents in the domestic violence proceedings as well as divorce proceedings. The ground on which transfer is sought is, that all the Applicants are residing in Mumbai and as such, tremendous hardships and inconvenience would be caused to them, if they are required to travel to the said places i. e. Sangli and Satara, where the Respondent No. 2 has instituted proceedings as against them. According to the Applicants, the Applicant Nos. 2 & 3 are suffering from old age ailments and that the pressure of the litigations coupled with traveling, would adversely affect their health. As far as the Applicant Nos. 5 & 6 are concerned, it is submitted that they have a five year old daughter and that traveling to the said places would adversely impact their daughter's health. It is further submitted that it would be convenient to both, i. e. the Applicants as well as the Respondent No. 2 to have the cases transferred to Navi Mumbai and that the transfer will also curtail the expenses of all the parties.

4. Mr. Pise, learned counsel for the Respondent No. 2

submits that there is no merit in the Application, inasmuch as, all the Applicants are arraigned as accused only in the 498A case, which is instituted in Satara. He submitted that as far as the D. V. and divorce proceedings are concerned, the same are only against the Applicant No. 1. He submits that the Respondent No. 1 is a housewife and is residing at Miraj, Sangli with her parents and that if the cases are transferred, as sought she will be put through to tremendous hardship, both financially as well as mentally.

5. Perused the papers. The Applicants are seeking transfer of the proceedings i. e. 498A case pending in the Court of Satara, domestic violence proceedings pending before the learned JMFC, Miraj, Sangli and divorce proceedings also pending before the learned CJSD, Sangli to the Courts of Navi Mumbai, on the ground that the Applicants will be put to tremendous hardship and harassment, if they are required to travel from Mumbai to the said places i. e. Satara & Sangli. As noted above, all the Applicants are arraigned as accused in the 498A case as well as in the D. V. case, whereas the husband i. e. the Applicant No. 1 is Respondent in the Divorce case pending in the Sangli Court. No cogent ground

is made for seeking transfer of the cases. It is pertinent to note, that under Section 407 of Cr. P. C., the High Court has the power to transfer cases only whenever it appears to the Court; (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or (b) that some question of law of unusual difficulty is likely to arise; or (c) that an order under this section is required by any provision of this Code, or will tend to general convenience of the parties or witnesses, or is expedient for the ends of justice.

6. The Respondent No. 1 is residing at Miraj, Sangli with her parents. If the cases as sought for are transferred, the Respondent No. 1 will be put to greater hardship both, financially and mentally. It is always open for the Applicants to file an exemption / give an undertaking to the Court, in accordance with law. If any such Application is filed, the learned Judge to consider the same in accordance with law. Having regard to what is stated aforesaid, no case is made out for transfer of cases as sought for. Accordingly, the Application stands rejected.

(REVATI MOHITE DERE, J.)