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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.120 OF 2020

1) Makrand s/o Gangadhar Borude
and others = PETITIONERS

VERSUS

1) The State of Maharashtra
and another. = RESPONDENT/S

Mr.DR Jaybhaye, Advocate for Petitioners;
Mrs. VS Patil-Jadhav, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 15th December, 2020.

PER COURT:-

1) Present petitioners are invoking constitutional powers of this court, under Article 227 of Constitution of India with Section 407 of Cr.P.C., for transferring Criminal Appeal No. 124/2018 pending before learned District & Sessions Judge, Ahmednagar to District & Sessions Judge at Pune.

2) Heard learned Advocate and learned APP appearing for respective parties.

3) It has been vehemently submitted on

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behalf of the petitioners that the petitioners are original respondents Nos. 1 to 4 in Criminal Appeal No.124/2018, which is filed by Respondent No.2, seeking relief of modification in the order passed by JMFC, Ahmednagar in Criminal M.A.No.1368/2015. Petitioner No.1 is husband and Respondent No.2 is his wife. It is stated that both the husband and wife are residing at Pune and, therefore, the appeal deserves to be transferred to Sessions Court at Pune. It has been further submitted that the petitioners are labours and due to economic condition they are unable to attend the matter in Ahmednagar on each and every date. The justice requires that the appeal be transferred to the Sessions Court at Pune.

4) It is not even necessary to issue notice to Respondent No.2, taking into consideration the contents in the petition and the documents attached thereto. It is to be noted that the notice or summons, that has been issued in SCC No.3828/2019 filed before JMFC, Pimpri Morwadi, Pune by the present petitioner No.1 against three persons including present Respondent No.3, shows that the

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said notice/summons was served on present Respondent No.2 at the address – Anand Vihar Sahakari Grihnirman Society Maryadit, Ravet, Pune and on that basis, it appears that it is contended that she resides at Pune. Learned Advocate appearing for the petitioners has failed to consider that in the appeal, i.e. Criminal Appeal No.124/2018, the appellant therein, i.e. Respondent No.2 herein, has given address to the effect – C/o Narayan Babu Dhawale, R/o Samindra Gulab Apartment, Jadhav Mala, Baliksahram Road, Tal and Dist. Ahmednagar. It appears that she had filed an application, under Section 12 of the Domestic Violence Act, for various reliefs under Sections 18, 19(3), 20 and 22 under the said Act by filing Criminal M.A.No.1368/2015. The petitioners herein have not come with a case that, even before the JMFC, before whom the said proceedings under the DV Act, are pending, they had raised a point of jurisdiction on the point of residence of aggrieved person. The Criminal Appeal was also filed on 8th June, 2018. The summons/notice, which has been produced, was issued on 11.11.2019, that means subsequent to filing of the criminal appeal. It

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has not been intentionally stated by the petitioners as to when they had appeared in the said criminal appeal before the learned Sessions Judge at Ahmednagar and whether they had raised again the point of jurisdiction. When an alternative efficacious remedy is available to challenge the jurisdiction, merely because the petitioners want the matter to be transferred, the Court cannot exercise its jurisdiction under Section 407 of Cr.P.C.

5) No case is made out for exercising the constitutional powers and, therefore, the writ petition deserves to be dismissed and it is accordingly dismissed.

(SMT. VIBHA KANKANWADI, J.)

BDV