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

CRIMINAL APPLICATION NO.389 OF 2019

Mrs. Harleen Johar and Ors.	... Applicant
Versus	
Dr. Kripa Dayal Singh Johar and Ors.	... Respondents

Mr. Digvijay G. Patil for the Applicant/Appellant.
Mr. Surel Sunil Shah for the Respondent No.1.
Mr. P.H. Gaikwad – Patil, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 28th FEBRUARY 2020.**

P.C.:

1 This is an application seeking transfer of application filed by the applicant under the provisions of Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate, First Class, Pune and registered as Miscellaneous Civil Application No.871 of 2016 to the Family Court at Pune. It is the contention of the learned counsel for the applicant that the applicant herein has also filed a petition seeking divorce before the Family Court at Pune which is registered as Petition No.A-718 of 2017. The applicant is seeking divorce on the ground of cruelty.

2 The learned counsel for the respondent vehemently submits that this Court may not have powers to transfer the proceeding under the Protection of Women from Domestic Violence Act from the Court of Judicial Magistrate, First Class to the Family Court in view of section 7(2) of the Family Courts Act, 1984 wherein the Family Court would have jurisdiction to adjudicate upon the issues pertaining to Chapter 9 of the Code of Criminal Procedure, 1973. However, sub-section (2) of the said Act contemplates such other jurisdiction as may be conferred upon it by any other enactment. It is submitted by the learned counsel for the respondent that the enactment of Protection of Women from Domestic Violence Act does not confer any jurisdiction upon the Family Court to adjudicate the matters under the provisions of Protection of Women from Domestic Violence Act.

3 The learned counsel for the applicant submitted that the Family Court would have jurisdiction to adjudicate upon the issues involved in the proceedings under the Protection of Women from Domestic Violence Act. Section 26 of the Family Courts Act reads thus :-

“26. Relief in other suits and legal proceedings. - (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

- (2) Any relief referred to in sub-section (1) may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.
- (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

4 In any case, the applicant has also filed a divorce petition alleging cruelty against the respondent and the evidence would be *para materia* the same. The learned counsel for the applicant has placed reliance upon the judgment of this Court in Misc. Civil Application No.255 of 2015 wherein this Court has observed as under :-

“16. It is not in dispute between the parties that the reliefs claimed by the applicant before the learned Metropolitan Magistrate under the provisions of Domestic Violence Act can be granted by the Family Court. Section 24 of the Code of Civil Procedure, 1908 in my view will have to be read with the Bombay High Court Appellate Side Rules, 1960 and in particular Rule 6 of Chapter I. A conjoint reading of section 24 of the Code of Civil Procedure, 1908 and Rule 6 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 clearly indicates that an application for transfer of suits, appeals, criminal cases or other proceedings pending for trial or disposal in any Civil Court or Criminal Court subordinate to the High Court or over which the High Court has power of superintendence, to another Court subordinate to or under the superintendence of the High Court, or to the High Court can be made before the Single Judge. In my view the High Court has power of superintendence over the court of learned Metropolitan Magistrate. Under Rule 6 of Chapter I, the High Court is empowered to transfer any proceedings even pending before a criminal court which is subordinate to the High Court or over which the High Court has power of superintendence to

another criminal court which is subordinate to High Court or over which the High Court has power of superintendence and such court shall have jurisdiction to grant such reliefs on such transfer.”

5 No doubt, the present application is also filed under section 397 of the Code of Criminal Procedure. This application can be considered under section 407. Sub-clause (c) of section 407 of Code of Criminal Code reads thus :

“407. Power of High Court to transfer cases and appeals. -

(1) Whenever it is made to appear to the High Court. -

(a)

(b)

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order -

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.”

6 It is equitable that the Court of superior jurisdiction should decide the issues between the parties more particularly the convenience of the parties.

7 In view of this and in the interest of justice, it would be convenient for the parties to get the issues adjudicated by the same Court. It would be necessary to consider the convenience of the parties more particularly, in a matrimonial litigation where the evidence to be recorded would almost be the same.

8 In view of this, criminal application deserves to be allowed. Application is allowed in terms of prayer clause (a). The Court of Judicial Magistrate, Pune shall transfer the proceedings in M.C.A. No.871 of 2016 within four weeks from today to the Family Court, Pune. Parties shall remain present before the Family Court, Pune on 20th April 2020. It is submitted that both the matters are for recording of evidence. Both the petitions be tagged and heard together by the same Judge.

(SMT. SADHANA S. JADHAV, J.)